



**REQUEST FOR PROPOSALS**

**TO PROVIDE**

**PROGRESSIVE DESIGN-BUILD SERVICES**

**FOR THE**

**NORTH/WEST BATTERY PARK CITY RESILIENCY PROJECT**

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## 1 BACKGROUND

### 1.1 Introduction

This Request for Proposals (RFP) for the North/West Battery Park City Resiliency Project (Project), the second step in a two-step (RFQ/RFP) procurement process being conducted by Battery Park City Authority (BPCA), invites Proposals submitted according to the requirements set forth in this RFP from the shortlisted teams identified below (Proposers). The Proposals will be reviewed and evaluated by the Evaluation Committee to determine the Highest Scoring Proposer, as described in Section 6 (Proposal Evaluation). Upon completion of the proposal evaluation process, BPCA intends to enter into a PDB Contract with the Highest Scoring Proposer. The Proposers identified below submitted a Statement of Qualifications (SOQ) to BPCA pursuant to BPCA's September 10, 2021 Request for Qualifications (RFQ) and were shortlisted to receive this RFP.

Only the following Proposers are eligible to submit Proposals in response to this RFP:

- (a) Hunter Roberts Construction Group LLC;
- (b) Kiewit Infrastructure Co.;
- (c) Skanska USA Building; and
- (d) Turner Construction Co.

This RFP is not a tender or an offer, and there is no intention by BPCA to make an offer by issuing this RFP.

### 1.2 BPCA Goals

As stated in the RFQ, BPCA's goals for the Project are as follows:

- (a) Resiliency and Environmental Stewardship – Design and construct a Project that meets FEMA certification requirements associated with the target level of design, provides long-term risk reduction to Battery Park City from coastal flooding events, adheres to a standard of design excellence consistent with that of existing Battery Park City development, incorporates specific sustainability goals (including those set forth in BPCA's Sustainability Plan at <https://bpca.ny.gov/wp-content/uploads/2020/09/BPC-Sustainability-Plan.pdf>) and minimizes environmental impacts through effective and efficient design and construction methods.
- (b) Engagement and Collaboration – Through effective engagement, communication and collaboration with a diverse group of impacted community residents, property owners and public stakeholders (including, without limitation, City, State and federal agencies and entities), develop an environment of trust and collaboration in order to facilitate an outcome that meets the overall Project objectives in the most community-sensitive and cost-effective manner possible and that can engender wide community support and maintain public trust through completion of the Project.
- (c) Design & Quality Excellence – Responding to community engagement and BPCA's project aspirations, develop an urban, landscape and architectural design response that is innovative, efficient and centered on enhanced urban human experience as well as environmental sustainability.

- (d) Budget and Schedule Compliance – Design and construct the Project on time and within the established budget, employing innovation and best practices in progressive design-build contracting to optimize timely and cost-effective Project delivery with transparent and competitive pricing that is thoroughly defensible in the light of public scrutiny and audit.
- (e) Effective Project Management and Accountability – Develop and implement effective project management to meet the PDB Contract scope, schedule, and budget requirements, proactively identify and manage Project risks, and provide for a single point of accountability through the Design-Builder for all aspects of PDB Contract performance.
- (f) Safety – Complete the Project in a safe manner through the implementation of an effective safety program and measures to ensure both public and worker safety by incorporating industry best practices, maintaining zero OSHA recordable injuries and minimizing near misses.
- (g) Long-term Maintenance – Select material types, finishes, thickness, connections and other attributes to maximize product durability and longevity and minimize short and long-term maintenance while also implementing constructible solutions that facilitate maintenance activities when required.

With the issuance of this RFP, BPCA has also established one additional Project goal:

- (h) Minimizing Impacts and Preserving the Character of Battery Park City – Design and construct the Project in a manner that (i) minimizes impacts and disruptions to the community during construction, and (ii) preserves the character of Battery Park City by minimizing to the extent feasible, while still meeting the primary resiliency objectives of the Project, the nature and extent of material modifications to the existing integral design features and primary infrastructure elements of the community.

### 1.3 Abbreviations and Definitions

The following abbreviations and definitions shall apply generally to the RFP process and have the meanings set forth below.

#### 1.3.1 Abbreviations

BPCA	Battery Park City Authority
BPC	Battery Park City
BPCPC	Battery Park City Parks Conservancy Corporation
BOD	Basis of Design
CEQR	New York City Environmental Quality Review
DEC	New York State Department of Environmental Conservation
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FOIL	Freedom of Information Law
GMP	Guaranteed Maximum Price
MBE/WBE	Minority Business Enterprise/Women Business Enterprise
NDA	Confidentiality and Non-Disclosure Agreement
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
PDB	Progressive Design-Build
PLA	Project Labor Agreement

RFP	Request for Proposals
RFQ	Request for Qualifications
SDVOB	Service Disabled Veteran-Owned Businesses
SEQRA	State of New York Environmental Quality Review Act
SOQ	Statement of Qualifications
USACE	United States Army Corps of Engineers

### 1.3.2 Defined Terms

Capitalized terms not defined in this Section 1.3.2 have the meaning set forth in Section 1.1 (Definitions) of the Draft PDB Contract.

**Addendum/Addenda** – A written supplemental addition, deletion or modification to this RFP issued by BPCA after the date of initial publication of this RFP.

**Advisory Team** – The team of advisors identified in Section 4.4 (Restrictions on the Involvement of BPCA Advisory Team) and any additional advisors appointed by BPCA for the Project.

**Ballfields Project** – The Battery Park City Ballfield & Community Center Resiliency Project.

**Battery Park City Authority (BPCA)** – The Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation of the State.

**Board** – The BPCA Board of Directors.

**BPCA Goals** – The BPCA goals for the Project, as set forth in Section 1.2 (BPCA Goals).

**BPC Resiliency Projects** – All urban flood resiliency projects currently anticipated to be undertaken by BPCA, including the Project, the South BPC Project and the Ballfields Project.

**Confidentiality and Non-Disclosure Agreement (NDA)** – A confidentiality and non-disclosure agreement in the form set forth in Schedule E (Form of Confidentiality and Non-Disclosure Agreement).

**Consulting Engineer** – AECOM USA, Inc., as counterparty to BPCA under that certain Consulting Engineer Services Agreement dated June 10, 2021, including its sub-consultants, subcontractors and all associated personnel in connection therewith.

**Contract Services** – The Phase 1 Services and the Phase 2 Work, along with all other obligations and responsibilities of the Design-Builder under the PDB Contract.

**DB Act** – The New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York, as amended.

**Designated Contacts** – Any individual identified pursuant to Section 3.4.1 (Communications to BPCA) of this RFP as a Designated Contact, including the MBE/WBE/SDVOB Designated Contact.

**Design-Builder** – The entity selected pursuant to the RFQ and RFP process to enter into the PDB Contract with BPCA.

**Draft PDB Contract** – The draft of the PDB Contract issued by Addendum as Schedule B (Draft PDB Contract) hereto, as the same may be amended pursuant to any further Addenda.

**Evaluation Committee** – The committee of BPCA employees designated by BPCA to review and evaluate Proposals in accordance with this RFP.

**Freedom of Information Law** – Article 6 of the State Public Officers Law.

**General Information Proposal** – The portion of the Proposal that includes all materials required by Volume 1 (General Information Proposal) of Schedule A (Proposal Submittal Requirements).

**Guaranteed Maximum Price (GMP)** – The limit of the total of all amounts payable to the Design-Builder by BPCA for allowable costs incurred in the performance of Phase 2 Work, as established by the GMP Amendment and as may be adjusted from time to time in accordance with the PDB Contract.

**Highest Scoring Proposer** – The responsive Proposer selected pursuant to Section 6 (Proposal Evaluation) that is determined by BPCA to have the highest scoring Proposal.

**Individual Meetings** – The meetings to be held on an individual basis between BPCA, with its Advisory Team, and each Proposer during the Proposal preparation period, as further described in Section 3.5 (Individual Meetings During the Proposal Preparation Period).

**Key Entities** – With respect to each Proposer:

- (a) The Proposer;
- (b) Each joint venture member of the Proposer described in the SOQ;
- (c) The proposed lead construction subcontractor described in the SOQ;
- (d) The proposed lead engineering/design subcontractor described in the SOQ; and
- (e) Any substitute approved by BPCA in accordance with Section 4.1 (Continuity of Proposer Team; Changes in Proposer's Organization).

**Key Personnel** – Certain key management and supervisory personnel employed by the Design-Builder or other firm included on the Proposer Team, who will fill certain key roles in delivery of the Project and related services by the Design-Builder, as identified and described in a Proposer's SOQ and Proposal.

**MBE/WBE/SDVOB Designated Contact** – The individual identified as such in Section 3.4.1 (Communications to BPCA).

**PDB Contract** – The agreement to be entered into between the Design-Builder and BPCA, including the Appendices and all other Contract Documents (as defined in the Draft PDB Contract), to perform the Contract Services.

**Phase 1 Not to Exceed Amount** – The Design-Builder's not to exceed amount for the performance of the Phase 1 Services, as further described in the Draft PDB Contract and proposed on Proposal Form 8 (Phase 1 Not to Exceed Amount).

**Phase 1 Services** – The design, planning, permitting and other pre-construction services to be performed by the Design-Builder pursuant to the PDB Contract prior to the execution and delivery of the final GMP Amendment.

**Phase 1 Services Period** – The period of time in which the Design-Builder will complete the Phase 1 Services, beginning with the execution and delivery of the PDB Contract and concluding on the date of execution and delivery of the final GMP Amendment.

**Phase 2 Fixed Percentage Fee** – The Design-Builder’s percentage mark-up to be applied to the allowable costs related to the Phase 2 Work, as further described in the Draft PDB Contract and proposed on Proposal Form 7 (Phase 2 Fixed Percentage Fee).

**Phase 2 Work** – All work, besides the Phase 1 Services, necessary to achieve Final Completion (as defined in the Draft PDB Contract), including the balance of the design resulting in issued for construction documents, construction, commissioning, testing and related services for the completion of the Project.

**Phase 2 Work Period** – The period of time in which the Design-Builder will complete the Phase 2 Work, beginning with the execution and delivery of a GMP Amendment (or, with respect to any Early Work Package, an Early Work Package Amendment) and concluding with the achievement of Final Completion (as defined in the Draft PDB Contract).

**Price Proposal** – The portion of the Proposal that includes all materials required by Volume 3 (Price Proposal) of Schedule A (Proposal Submittal Requirements).

**Prohibited Entities List** – The list of “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

**Project** – The North/West Battery Park City Resiliency Project.

**Project Technical Criteria** – The set of technical objectives, requirements and related information developed by BPCA and set forth in Schedule C (Project Technical Criteria) of this RFP and ultimately incorporated into the final PDB Contract in Appendix 4 (Project Technical Criteria), to define the scope of the Project and guide the performance of the Contract Services. The Project Technical Criteria does not include any information included in Schedule C-1 (Exploratory Site Analysis), Schedule C-2 (Environmental) or Schedule C-3 (Stakeholder and Community Engagement).

**Proposal** – The proposal, consisting of the General Information Proposal, Technical Proposal and Price Proposal, submitted by a Proposer in response to this RFP for the Project.

**Proposal Due Date** – The date, set forth in Section 3.1 (Procurement Schedule), on which Proposals are due to be submitted to BPCA.

**Proposal Form** – The forms included in this RFP which the Proposer must include in its Proposal in accordance with Schedule A (Proposal Submittal Requirements).

**Proposal Work Product Agreement** – A proposal work product agreement in the form set forth in Proposal Form 6 (Proposal Work Product Agreement).

**Proposed Alignment** – The conceptual end-to-end Project alignment, based on the Project Technical Criteria and prepared in accordance with the requirements of Section 2-2 (Design Concepts) of Schedule A (Proposal Submittal Requirements), that is submitted by a Proposer in Section 2-2 (Design Concepts) of their Technical Proposal.

**Proposer** – The entity invited to submit a Proposal in response to this RFP for the Project, which shall be the same entity as the Respondent shortlisted pursuant to the RFQ.

**Proposer Team** – The Proposer, its Key Personnel, and each Key Entity.



**Protest Official** – An individual designated in accordance with Section 7.2 (Protests Generally).

**Request for Proposals (RFP)** – This request for proposals, entitled “Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project” and any Addenda.

**Request for Qualifications (RFQ)** – The request for qualifications, entitled “Request for Qualifications to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project”, issued by BPCA on September 10, 2021, as amended.

**Respondent** – An entity that submitted an SOQ in response to the RFQ.

**ROM Cost Estimate** – The rough order of magnitude estimate of the construction costs of the Project (i.e., the estimated cost of labor, materials and equipment), which is based on the Proposer’s base Proposed Alignment (excluding any secondary options or considerations a Proposer may wish to include in Section 2-2 (Design Concepts) of their Technical Proposal) and provided by a Proposer in Proposal Form 9 (ROM Cost Estimate).

**Secure Website** or **PROCORE** – The secure website for communications concerning the RFP and following award, implementation of the PDB Contract, as described in Section 3.4.2 (Communications from BPCA).

**South BPC Project** – The South Battery Park City Resiliency Project.

**State** – The State of New York.

**Statement of Qualifications (SOQ)** – A submittal, made in accordance with and in response to the terms of RFQ, including all clarifications and supplements thereto.

**Technical Proposal** – The portion of the Proposal that includes all materials required by Volume 2 (Technical Proposal) of Schedule A (Proposal Submittal Requirements).

## **2 PROJECT OVERVIEW**

### **2.1 Project Background**

Climate change induced sea level rise accompanied by more frequent, intense storm events and storm surges are a significant risk to coastal communities around the world. Superstorm Sandy accentuated the impacts of these types of events in the New York City area in 2012. Many coastal communities face the significant challenge of identifying how to address these types of impacts through resiliency improvements, while simultaneously prioritizing design strategies that improve the quality of life in city spaces. Innovative design strategies are required to implement integrated and multi-purpose resilient systems that also maintain and enhance development and spatial quality for coastal communities. In the years since Superstorm Sandy, BPCA has undertaken targeted efforts responsive to the threats of damage and injury to assets and areas within Battery Park City posed by future severe storm activity. In 2014, BPCA began a series of structured waterfront assessments and studies to investigate opportunities to provide a full community-wide system of protection to address the risks to Battery Park City of flooding resulting from storm events, coastal surge, and sea level rise associated with global climate change. The North/West BPC Resiliency Project seeks to address flooding at low points along the North Esplanade of Battery Park City and along the waterside length of the Battery Park City esplanade to 1st Place.

The BPC Resiliency Projects are intended to provide risk reduction for Battery Park City and its residents, with each BPC Resiliency Project providing a set of flood barriers and interior drainage improvements with standalone, independent utility at different locations in Battery Park City.

As stated in the RFQ, BPCA has determined to proceed with this procurement for the Project on a progressive design-build basis in accordance with the DB Act, while the Ballfields Project and the South BPC Project proceed separately under the design-bid-build project delivery method

### **2.2 Project Status**

The Project description and scope of the Contract Services generally remain as set forth in Section 2 of the RFQ. However, since issuance of the RFQ, BPCA and its Advisory Team have established an approach to environmental review, planning and permitting for the Project that is intended to maximize the benefits of PDB contracting while preserving the schedule for Project development set forth in the RFQ. Rather than specifying an end-to-end alignment for the Project in the Project Technical Criteria that would serve as the basis for the draft EIS scope of work but limit opportunity for design innovation, BPCA has determined to require Proposers to include a Proposed Alignment as part of their Technical Proposals. Each Proposed Alignment will be evaluated in accordance with this RFP. Additionally, BPCA will utilize the Proposed Alignments to finalize the draft EIS scope of work, as further described in Section 2.4.2 (EIS Process; Use of Proposed Alignments). BPCA recognizes the effort that will be required for each Proposer to develop the Proposed Alignment and has obtained Board approval for the Proposal Work Product Agreements, as further described in Section 8 (Proposal Work Product Payments).

### **2.3 Project Technical Criteria**

The Project Technical Criteria was developed to:

- (a) present the overarching objectives for the Project;
- (b) provide sufficient technical information regarding existing site conditions, critical features and general considerations to enable Proposers to assess the scope of work and the risk involved;
- (c) convey the Project's technical requirements across a range of architectural, engineering and sustainability disciplines; and
- (d) enable Proposers submit a fully informed Technical Proposal and Price Proposal.

Proposals, including each Proposed Alignment, must be prepared and submitted in compliance with the requirements of the Project Technical Criteria. The final design solution developed during the Phase 1 Services Period pursuant to the PDB Contract will also be required to comply with the requirements of the Project Technical Criteria.

The Project Technical Criteria contain information relating to the performance criteria and specifications that the Project will need to meet in order for the Design-Builder to achieve Substantial Completion and Final Completion, as such terms are defined in the Draft PDB Contract. Proposers shall promptly report in writing to BPCA in accordance with Section 3.4 (Communications Protocols) any conflict, ambiguity, or discrepancy that the Proposer discovers in the Project Technical Criteria. Proposers may propose changes to the Project Technical Criteria prior to the submission of their Proposals. Any changes that BPCA accepts will be reflected in an Addendum. All Proposers will ultimately submit a Proposal based on the same final Project Technical Criteria established pursuant to this RFP.

The Project Technical Criteria does not include any information included in Schedule C-1 (Exploratory Site Analysis), Schedule C-2 (Environmental) or Schedule C-3 (Stakeholder and Community Engagement). Schedule C-1, Schedule C-2 and Schedule C-3 constitute additional documents prepared by the Consulting Engineer in connection with this Project and certain portions of such Schedules may be used by the Design-Builder as Reliance Documents as and to the extent provided in the Draft PDB Contract.

## **2.4 Governmental Approvals**

### **2.4.1 SEQRA/CEQR**

The North/West Battery Park City Resiliency Project is a substantial capital project that will require a number of discretionary actions and approvals that are subject to the environmental review requirements of SEQRA, with analysis procedures that follow CEQR technical manual guidelines. To meet these environmental review requirements, BPCA will prepare an EIS that analyzes the proposed Project and any associated impact avoidance or mitigation measures, including those required by permitting agencies such as DEC and USACE. Close coordination will be required among BPCA, the Consulting Engineer team and the selected Design-Builder to validate design and construction assumptions, minimize impacts to the extent feasible, and examine alternatives that will support this environmental review and permitting process.

### **2.4.2 EIS Process; Use of Proposed Alignments**

An initial step in the EIS process is the publication of a draft EIS scope of work, which will establish the general parameters for continued Project development and set the baseline for determining the preferred alignment for the Project. As set forth in Section 2.5 (Project Milestones) and for the reasons noted in Section 2.2 (Project Status), BPCA anticipates publication of the draft EIS scope of work in May 2022, which will be prior to the selection of the Design-Builder. BPCA will work with the Consulting Engineer to prepare the draft EIS scope of work based on the Project Technical Criteria and the Proposed Alignments submitted by the Proposers. The draft EIS scope of work may include concepts or elements from multiple Proposed Alignments, but will not identify any particular Proposal or Proposer. The evaluation of Proposals, including the Proposed Alignments, will be as set forth in this RFP, and the inclusion or exclusion of any concept or element of a Proposed Alignment in the draft EIS scope of work will not be an independent factor in the selection of the Design-Builder.

Following publication of the draft EIS scope of work, the selected Design-Builder will be responsible for advancing the design of the Project, consistent with the Project Technical Criteria and the published draft EIS scope of work, as part of the Phase 1 Services. Accordingly, the Design-Builder may be required to advance design concepts that originated from another Proposed Alignment, and no Proposer should assume that it would focus only on the advancement of its Proposed Alignment in performing the Phase 1 Services if selected as the

Design-Builder. BPCA will ultimately determine the preferred alignment for the Project during the course of the performance of the Phase 1 Services, with support from both the Consulting Engineer and the selected Design-Builder. The anticipated milestones for completion of the environmental review process are included in Section 2.5 (Project Milestones), and the respective responsibilities of the parties in connection therewith are generally described in the following provisions.

By submitting a Proposal, each Proposer acknowledges and agrees that BPCA may utilize the Proposed Alignments in the manner described in this RFP. BPCA's rights with respect to the Proposals, including the Proposed Alignments, are further described in Section 3.11 (Property of BPCA).

### **2.4.3 Environmental Permitting; BPCA-designated Governmental Approvals**

Construction activities occurring within the coastal zone are highly regulated under multiple regulatory programs of various federal and state agencies. The Design-Builder and the Consulting Engineer will work together to identify regulatory and environmental constraints and regularly attend meetings with federal, State and City agencies to present Design-Builder-developed design drawings, details, possible impacts and alternatives analysis. Requirements under the various regulatory programs could significantly affect the design of the Project. As part of the Phase 1 Services, the Design-Builder will support BPCA and its Advisory Team in advancing the permit review process, which will require regular attendance at environmental assessment and permit related progress meetings, attendance at meetings with various regulatory agencies and supply of technical information as detailed above. Permit applications will be submitted based on the preliminary design drawings to be developed by the Design-Builder during the Phase 1 Services.

During the permit review period and in coordination with BPCA and the Consulting Engineer, the Design-Builder will respond to permit related questions and revise drawings, as necessary, to address agency comments.

The Design-Builder will be required to address and implement any on-site mitigation required as part of the regulatory approvals. BPCA will retain the responsibility for implementing any off-site mitigation measures or the purchase of potential off-set credits that may be required in addition to any agreed to on-site mitigation effort.

The BPCA-designated Governmental Approvals each relate to the environmental permitting process and are the State and federal permits referenced in Section 2.5 (Project Milestones). BPCA, with support from the Design-Builder as described herein and in the Draft PDB Contract, will be responsible for obtaining the BPCA-designated Governmental Approvals, which must be obtained prior to the performance of any Phase 2 Work. Specifically, the BPCA-designated Governmental Approvals are as follows:

- (a) Individual Permit under Section 10 of the Rivers and Harbors Act (USACE);
- (b) Individual Permit under Section 404 of the Clean Waters Act (USACE);
- (c) Article 25 Tidal Wetland Permit (NYSDEC);
- (d) Article 15 Protection of Waters Permit: Excavation and Fill in Navigable Waters (NYSDEC);
- (e) State Water Quality Certification (NYSDEC);
- (f) State Coastal Consistency Review (NYSDOS);
- (g) NYC Waterfront Revitalization Program Coastal Consistency Review (NYCDCP);
- (h) SEQRA/CEQR Final EIS Publication & Findings Statement (BPCA); and

- (i) Consulting with the New York State Historic Preservation Office (SHPO) and the New York City Landmarks Preservation Commission (LPC), completing necessary analyses and investigations as requested by the agencies and working with SHPO and LPC to determine, based on those investigations, whether any mitigation or monitoring measures will be required for the Project, which will be reflected in a memorandum of understanding and ultimately in certain of the BPCA-designated Governmental Approvals listed above.

The Design-Builder will be responsible for complying with the BPCA-designated Governmental Approvals in performing the Phase 2 Work.

#### 2.4.4 All Other Governmental Approvals

Except as set forth above with respect to the BPCA-designated Governmental Approvals, the Design-Builder will be responsible for obtaining, maintaining and complying with all Governmental Approvals required for the Project. Notwithstanding the RFQ term sheet, this will include responsibility for initial FEMA coordination and securing a conditional letter of map revision (CLOMR), as well as the final FEMA certification and letter of map revision (LOMR). BPCA determined to make this change based on the process for finalizing the preferred alignment, as described above.

The Design-Builder will be required to retain a qualified expeditor to file required permit applications, any required Uniform Land Use Review Procedures (ULURP) and subsequently, certificates of completion to appropriate Governmental Bodies such as DOB, DSBS, NYSDOT, NYCDOT, NYCDPR, NYC Planning Commission etc. Such services will include filing amendments as needed, checking on the progress of applications and all other services necessary to obtain and maintain required Governmental Approvals.

#### 2.5 Project Milestones

The anticipated timeline for the Project, which is subject to revision by Addendum, is as follows.

No.	Action	Dates/Times
<b>A</b>	<b>Phase 1 Services</b>	
1	Draft (EIS) Scope of Work Publication	May 2022
2	Public Scoping Meeting	Jun 2022
3	Execute PDB Contract/Phase 1 Services NTP	Jul 2022
4	Commence Interagency & Regulatory Coordination with DB	Aug 2022
5	Lead Agency + Others: DEIS Review (rolling chapter reviews)	Sep 2022 – Jan 2023
6	Pre-Application (USACE) Workshop	Sep 2022
7	Recommendation of Preferred Alternative	Oct 2022
8	Pre-Application (USACE) Meeting	Nov 2022
9	Draft 30% Progress Presentation and Workshop	Nov 2022
10	Refine Preferred Alternative /30% Design Submission	Dec 2022
11	Publish Draft EIS	Jan 2023
12	Submit Joint Permit (USACE, NYSDEC) Application	Jan 2023

No.	Action	Dates/Times
13	Draft EIS – Public Hearing	Feb 2023
14	FEIS Preparation	Feb 2023 – Apr 2023
15	Draft 60% Progress Presentation and Workshop	Mar 2023
16	Lead Agency – FEIS Review	Apr 2023 – May 2023
17	Publish Final EIS	May 2023
18	Execution of Early Work Package Amendment(s)/Early Work Package(s) NTP (if applicable)	Mar 2023 – Jul 2023
19	60% Design Submission	May 2023
20	Issue Findings Statement	Jun 2023
21	State Permit Issuance (NYSDEC)	Jul 2023 – Nov 2023
22	Federal Permit Issuance (USACE)	July 2023 – Dec 2023
23	Execution of GMP Amendment	Aug 2023 – Jan 2024
<b>B</b>	<b>Phase 2 Work</b>	
1	Phase 2 Work NTP**	Sep 2023 – Jan 2024
2	Substantial Completion	Jul 2026 – Nov 2026
3	Final As-built Submissions	Aug 2026 – Dec 2026
4	Close Permit applications	Aug 2026 – Jan 2027
5	Certificate of Final Completion**	Sep 2026 – Jan 2027

\*\*The expectation is that the Design-Builder will achieve Final Completion in accordance with the PDB Contract within 1,185 calendar days from receipt of the Phase 2 Work NTP. The Phase 2 Work date ranges reflect this assumed construction timeline, with the assumption that the Phase 2 Work NTP will not be issued until the NYSDEC and USACE permits are issued.

Constraints	
In-Water Work Moratoriums (anticipated)	Nov 1 – Mar 15 (Annually)
NYCDOT Winter Holiday Embargo	Mid Nov – Jan 2 (Annually)

## 2.6 Project Funding and Budget

Funding for the Project will be provided through the issuance of bonds by BPCA. No federal funding is anticipated. While an estimated range for the PDB Contract budget was provided in the RFQ, BPCA anticipates revising such number based on the ROM Cost Estimates it receives from Proposers, the Consulting Engineer's independent evaluation of such ROM Cost Estimates, and the Phase 2 Fixed Percentage Fee of the selected Design-Builder. BPCA's objective is to establish a final Project budget for the PDB Contract that reflects the cost of delivering a Project that will:

- (a) maximize the effectiveness of the flood barrier system at the most cost-effective investment;
- (b) be designed and constructed in compliance with the Project Technical Criteria, as may be modified and approved by BPCA in its discretion; and
- (c) be responsive to and achieve the BPCA Goals detailed in Section 1.2 (BPCA Goals).

## 2.7 Draft PDB Contract

The Draft PDB Contract will be issued by Addendum shortly following issuance of this RFP and will set forth the expected terms and conditions for the performance of the Contract Services, including both the Phase 1 Services and the Phase 2 Work. The RFP process is expected to conclude with the award of a PDB Contract to perform the Phase 1 Services (generally consisting of pre-construction services such as planning, consulting, design, scheduling, GMP development, cost estimating and EIS/permitting support).

The Phase 2 Work will be performed pursuant to the GMP Amendment negotiated based on the Design-Builder's GMP Proposal, as well as any Early Work Package Amendments entered into during the Phase 1 Services Period. As described in Section 3.6 (Proposer Comments on the RFP, Project Technical Criteria and Draft PDB Contract), Proposers may propose changes to the Draft PDB Contract prior to the submission of their Proposals. Any changes that BPCA accepts will be reflected in an Addendum. All Proposers will ultimately submit a Proposal based on the same final Draft PDB Contract established pursuant to this RFP; provided, however, that Proposers may submit limited final comments on such final Draft PDB Contract in accordance with the requirements set forth in Section 1-10 (PDB Contract Terms) of Schedule A (Proposal Submittal Requirements) and as part of their General Information Proposals. BPCA will have the discretion to accept, reject or negotiate any proposed change to the final Draft PDB Contract.

## 2.8 Project Labor Agreement

The Design-Builder will be required to enter into a PLA for the Phase 2 Work. BPCA anticipates that the Design-Builder will, as part of the Phase 1 Services, work with BPCA and its outside legal counsel to develop and finalize the PLA. The PLA must be finalized and executed prior to the execution of any Early Work Package Amendment or the GMP Amendment and will govern labor issues associated with the performance of the Phase 2 Work.

## 2.9 General Project Information and Background Documents; Required Early Submittal of the Confidentiality and Non-Disclosure Agreement

General information concerning the BPC Resiliency Projects can be found on BPCA's website at <https://bpca.ny.gov/nature-and-sustainability/resiliency/>. Proposers may also wish to review the Lower Manhattan Climate Resiliency Study, providing a framework for the Lower Manhattan Coastal Resiliency Project, at [https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final\\_Image/Lower\\_Manhattan\\_Climate\\_Resilience\\_March\\_2019.pdf](https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manhattan_Climate_Resilience_March_2019.pdf) and available on BPCA's website.

BPCA will also make available to Proposers the documents listed in Schedule D (Background Documents) via the Secure Website, subject to the receipt and execution of (i) a Confidentiality

and Non-Disclosure Agreement in the form set forth in Schedule E (Form of Confidentiality and Non-Disclosure Agreement), (ii) Attachment A thereto by each representative that will access such documents, and as necessary, (iii) Schedule F (Form of Subcontractor Confidentiality and Non-Disclosure Agreement). Proposers must have their authorized representative sign and submit such Confidentiality and Non-Disclosure Agreement to the Designated Contacts in accordance with Section 3.4.1 (Communications to BPCA) on or before the deadline set forth in Section 3.1 (Procurement Schedule). Promptly following receipt of such executed agreement in accordance with this Section and Section 3.4.1, the Designated Contact will return a countersigned agreement to the Proposer. A Proposer's use of any documents listed in Schedule D (Background Documents) or other documents made available on the Secure Website (including Schedule C (Project Technical Criteria), Schedule C-1 (Exploratory Site Analysis), Schedule C-2 (Environmental) and Schedule C-3 (Stakeholder and Community Engagement)) will be subject to the terms and conditions of the Confidentiality and Non-Disclosure Agreement. Additional information may be posted to Secure Website, from time to time, during this RFP process.

Notwithstanding the execution of a confidentiality and non-disclosure agreement as part of the RFQ process, all Proposers must execute a new Confidentiality and Non-Disclosure Agreement as part of this RFP process and have their representatives execute Attachment A thereto.

Information made available on BPCA's website or on the Secure Website pursuant to the Confidentiality and Non-Disclosure Agreement is for reference and background information only. Such information may not be current and may reflect status or expectations as of an earlier date. BPCA makes no representation as to the accuracy, completeness, or pertinence of such information for any purpose and will not be responsible for any interpretations thereof or conclusions drawn therefrom. The Design-Builder will have the rights specified in the PDB Contract with respect to certain documents designated as Reliance Documents, as more particularly described in the Draft PDB Contract.



### 3 PROCUREMENT PROCESS AND GENERAL PROPOSAL INSTRUCTIONS

#### 3.1 Procurement Schedule

The following table summarizes the anticipated events in the RFP process, all of which are subject to change at the sole discretion of BPCA. BPCA will notify Proposers of any revisions to the procurement schedule by Addenda.

<b>Action</b>	<b>Date/Times (Eastern Time)</b>
Issue RFP (including Schedule C, portions of Schedule C-1 and Schedule D)	January 27, 2022
Issue Draft PDB Contract and Appendices	February 4, 2022
Deadline for Submittal of Confidentiality and Non-Disclosure Agreement	February 8, 2022 (2:00 p.m.)
Guided Site Visit	February 9, 2022 (10:00 a.m.)
First Round of Individual Meetings	February 14-18, 2022
Deadline for Submittal of Subcontractor Confidentiality and Non-Disclosure Agreement	February 18, 2022 (2:00 p.m.)
Second Round of Individual Meetings	March 1 to 4, 2022
Third Round of Individual Meetings	March 22 to 24, 2022
Deadline for Submitting Proposer Questions	April 5, 2022
Proposal Due Date	May 6, 2022 (2:00 p.m.)
Proposal Review & Evaluation Process	May 6 to June 3, 2022
Conduct Interviews	June 6 to June 10, 2022
Finalize Evaluations and PDB Contract Negotiations	June 11 to July 19, 2022
Board Meeting	July 27, 2022
Announcement of Selected Proposer	July 28, 2022
Expected Date of PDB Contract Execution and Phase 1 Services Notice to Proceed	July 29, 2022

#### 3.2 Proposer Diligence

It is the responsibility of each Proposer before submitting a Proposal to:

- (a) Examine, with appropriate care and diligence, this RFP, and all material posted on the Secure Website;
- (b) Inform itself regarding any and all conditions that may in any way affect the nature of its Proposal or the performance of the Contract Services;
- (c) Become familiar with the Project site and the general, local, or other conditions that may affect cost, progress, performance, or furnishing of the Contract Services;
- (d) Become familiar with and satisfied as to all federal, State, New York City and other local laws or regulations that may affect cost, progress, performance or furnishing of the Contract Services;
- (e) Study and carefully correlate Proposer's knowledge and observations with this RFP, the Project Technical Criteria, the Draft PDB Contract, Addenda and such other related data; and
- (f) Promptly notify BPCA of any conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in this RFP.

Any failure of a Proposer to undertake such diligence itself shall be at the Proposer's sole risk.

### 3.3 Site Visits and Field Inspection

A guided site visit will be conducted by BPCA for the benefit of the Proposers on the date and time indicated in Section 3.1 (Procurement Schedule). Proposers may bring a maximum of five representatives to such guided site visit.

If a Proposer determines that any site visits or field inspection in addition to such guided site visit are necessary to properly prepare a Proposal, whether on BPCA property or on private property, the Proposer shall, prior to performing any such visit or inspection, request site access from the Designated Contacts at least seven calendar days in advance of the requested date. BPCA will arrange for additional supervised site visits to the extent reasonably requested by the Proposers.

Proposers are required to comply with all safety requirements and other terms and conditions that may be imposed by BPCA in connection with the grant of any supervised site access.

### 3.4 Communications Protocols

#### 3.4.1 Communications to BPCA

Questions and requests for clarification or information regarding this RFP, including any request for access to the Secure Website and any request for supervised site access, must be submitted via email to the Designated Contacts listed below.

For purposes of this RFP, the following individuals are hereby identified as Designated Contacts and may respond to any email inquiry submitted in accordance with this Section 3.4.1:

Michael LaMancusa  
Assistant Contracting Officer  
[michael.lamancusa@bpca.ny.gov](mailto:michael.lamancusa@bpca.ny.gov)

Achille Niro  
CE Services Director  
[achille.niro@aecom.com](mailto:achille.niro@aecom.com)

BPCA reserves the right to designate other individuals as a Designated Contact at any time during the course of this procurement process, including as specified in Section 3.4.3 (Restricted Period).

For those questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the "**MBE/WBE/SDVOB Designated Contact**": Justin McLaughlin Williams at [Justin.McLaughlin-Williams@bpca.ny.gov](mailto:Justin.McLaughlin-Williams@bpca.ny.gov) or 212-417-2337.

To be considered, all questions and requests must be received in writing via email at the addresses designated above and by the date and time indicated in Section 3.1 (Procurement Schedule). Written communications must include the requestor's name, e-mail address, and the Proposer represented. E-mails should include "BPCA RFP for Design-Build Services" in the subject line.

#### 3.4.2 Communications from BPCA

Each Proposer's designated point of contact was provided with access, information and instructions with respect to accessing the Secure Website following notification of being shortlisted to receive this RFP.

Beginning with issuing this RFP, each Proposer has sole responsibility for keeping informed of all information posted by BPCA to the Secure Website. BPCA is not obligated to notify Proposers of the posting of any information to the Secure Website, including any Addenda.

The Secure Website is the primary means for BPCA to communicate PDB Contract-related matters to Proposers. BPCA additionally reserves the right to respond to questions submitted in accordance with Section 3.4.1 (Communications to BPCA) via email from a Designated Contact.

Examples of the kinds of information that will be posted to the Secure Website are:

- (a) Addenda, including any Addenda containing revisions to the Project Technical Criteria or Draft PDB Contract;
- (b) Questions, requests for clarification, and responses; and
- (c) Reference documents, as they become available throughout the procurement process.

No oral communications from a Designated Contact or any other individual will be binding on BPCA. BPCA disclaims the accuracy of any information derived from any source other than in writing and posted to the Secure Website or sent via email from a Designated Contact in accordance with this Section 3.4.2, and the use of any such information is at the sole risk of the Proposer.

### **3.4.3 Restricted Period**

State Finance Law Sections 139-j and 139-k apply to this RFP and procurement process, restricting Proposer contact with BPCA and its representatives, including the Advisory Team. Proposers are restricted from making contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA's conduct or decision with respect to a procurement) with anyone other than a Designated Contact during the period from the date of publication of the notice of the RFQ in the New York State Contract Reporter through approval of the PDB Contract or the cancellation of this procurement by BPCA. Employees of BPCA are required to record certain contacts during such restricted period, including, but not limited to, any oral, written or electronic communications that could reasonably be seen as intended to influence BPCA's conduct or award under this RFP and procurement. Upon notice of an improper contact, BPCA will make a determination regarding the Proposer's eligibility to continue participating in this procurement process. Failure of a Proposer to comply with these requirements may result in disqualification of the Proposer from the procurement process.

Each BPCA representative, including any member of the Advisory Team, who participates in any interview or meeting scheduled by BPCA as part of this procurement process will be considered a Designated Contact solely for purposes of conducting the interview or meeting, and communications during such interviews or meetings will be considered permissible contact.

### **3.4.4 Communications Among Proposer Teams**

No Proposer or any of its members may communicate with another Proposer or members of another Proposer Team with regard to this procurement or the Project, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer Team, provided that such subcontractor is not a Key Entity or Key Personnel and so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Proposers. By executing Proposal Form 1 (Proposal Transmittal Letter), each Proposer will certify compliance with the foregoing requirements.

### 3.4.5 Confidential Communications Protocol

In the event Proposers wish to submit questions which they believe contain proprietary or confidential information, Proposers can do so by submitting questions marked “CONFIDENTIAL” in the subject line of the email. Responses to questions which are marked “CONFIDENTIAL” may be sent only to the Proposer submitting the question so long as the response does not result in any change to the terms and conditions of the RFP, Project Technical Criteria or the Draft PDB Contract. However, any response that results in a change to the terms and conditions of this RFP, the Project Technical Criteria or the Draft PDB Contract will be issued via Addendum to all Proposers with the original question anonymized to remove any confidential information. In the event BPCA determines that a question marked “CONFIDENTIAL” does not contain confidential or proprietary information, BPCA will notify the Proposer and provide the Proposer with an opportunity to withdraw the question (the response to which may still be shared with Proposers via Addendum, with the original question anonymized to remove any confidential information, if it changes the terms and conditions of this RFP, the Project Technical Criteria or the Draft PDB Contract); submit a revised question which does not contain the subject information; or agree with BPCA’s determination, in which case the question will be treated as a non-confidential question.

### 3.5 Individual Meetings During the Proposal Preparation Period

BPCA expects to conduct Individual Meetings with each Proposer within the date range set forth in Section 3.1 (Procurement Schedule) to solicit information, discuss the proposed technical approach and solutions, and discuss issues and clarifications regarding this RFP, the Project Technical Criteria and the Draft PDB Contract. BPCA may schedule additional Individual Meetings by Addendum in BPCA’s discretion. Each Proposer shall have the same opportunity to participate in Individual Meetings.

The Individual Meetings are subject to the following:

- (a) All meeting details, including meeting duration, maximum number of participants and venue, will be communicated by BPCA in accordance with Section 3.4 (Communications Protocol). Each Proposer will be allocated the same amount of maximum time.
- (b) BPCA intends the meetings to provide Proposers with a better understanding of the requirements of this RFP, the Project Technical Criteria and the Draft PDB Contract.
- (c) BPCA will not discuss with any Proposer any Proposal other than its own.
- (d) Proposers shall not seek to obtain commitments from BPCA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- (e) BPCA intends no aspect of these meetings to provide any Proposer with access to information that is not similarly available to all other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.
- (f) Proposers shall provide an agenda for all Individual Meetings a minimum of two business days prior to the meeting date and may utilize such meetings as an opportunity to discuss topics related to the overall Project, RFP, Project Technical Criteria and Draft PDB Contract including clarifications or changes in accordance with the requirements in Section 3.6 (Proposer Comments on the RFP, Project Technical Criteria and Draft PDB Contract).

Attendance at the Individual Meetings shall serve as an acknowledgment of the foregoing. All Proposer participants shall be required to identify themselves at the commencement of the meeting.

During Individual Meetings, Proposers may ask questions, and BPCA may provide responses. However, Proposers shall not rely on any responses provided by BPCA during Individual Meetings. Nothing stated at any Individual Meeting or included in a written record or summary of an Individual Meeting will modify this Section or any other part of this RFP, the Project Technical Criteria or the Draft PDB Contract unless BPCA incorporates it into Addenda issued pursuant to Section 3.7 (Addenda). BPCA, at its sole discretion, will determine whether to issue Addenda in response to questions or issues raised during Individual Meetings.

BPCA will designate an individual to attend and observe all Individual Meetings to ensure that all Individual Meetings are conducted in a fair manner and in accordance with the requirements of this Section.

### **3.6 Proposer Comments on the RFP, Project Technical Criteria and Draft PDB Contract**

In preparation for any Individual Meeting in which a Proposer wishes to discuss any comments or proposed changes to this RFP, the Project Technical Criteria or the Draft PDB Contract, the Proposer is required to provide their comments and proposed revisions to the Designated Contacts no later than one week prior to the Individual Meeting. Such comments and proposed revisions may identify areas where the Proposer desires clarifications or changes to this RFP, the Project Technical Criteria or the Draft PDB Contract.

Proposers are reminded that, regardless of any specific comments provided by any individual Proposer, each Proposer will be required to submit their Proposal in compliance with the final revised common RFP, Project Technical Criteria and Draft PDB Contract shared with all Proposers by Addendum. Proposers will have the right to submit final comments to the Draft PDB Contract in accordance with Section 1-10 (PDB Contract Terms) of Schedule A (Proposal Submittal Requirements).

### **3.7 Addenda**

BPCA reserves the right, at its sole discretion, to revise, modify, or change this RFP, the Project Technical Criteria, the Draft PDB Contract, and procurement process at any time before the Proposal Due Date. BPCA will implement any such revisions by issuing Addenda. In issuing any Addendum, BPCA will take into consideration the Proposal Due Date and the time reasonably required for Proposers to account for the information included in the Addendum in preparing their Proposals. Any oral interpretations or clarifications of this RFP, including the related documents provided in connection with this RFP, will not change, modify, amend or waive the requirements of this RFP in any way. BPCA shall not be bound by, and Proposers may not rely on, any response provided other than by an Addendum or in writing by a Designated Contact pursuant to Section 3.4 (Communications Protocols).

Each Proposal must include the Proposer's acknowledgement of receipt of all Addenda in the Proposal Transmittal Letter (see Proposal Form 1). Failure to acknowledge such receipt may cause the Proposal to be deemed nonresponsive and be rejected.

### **3.8 Interviews following Proposal Submittals**

BPCA expects to conduct interviews of responsive Proposers on the dates set forth in Section 3.1 (Procurement Schedule). The purpose of these interviews is for the Proposer to highlight and explain information provided in their written Proposals by expressing their ideas and

qualifications in person. BPCA may, in its discretion, ask clarifying questions during the interview.

The interview format is expected to allow for a 60-minute Proposer presentation, followed by an up to 60-minute interactive discussion on the submitted Proposals. The interview is expected to adhere to the following requirements:

- (a) The Proposer may have up to 15 attendees from its Proposer Team participate in the meeting, which are expected to be held in person at a venue to be identified by a Designated Contact.
- (b) In addition to the Proposal, interview presentation materials are expected to include electronic presentations as necessary to thoroughly describe the Proposal.
- (c) Proposers shall provide copies of all interview presentation materials in portable document format (PDF) a minimum of 2 business days prior to the date of the interview.
- (d) BPCA reserves the right to request written confirmation of new information learned or commitments made during interviews.

### **3.9 Proposal Contents and Relationship to the PDB Contract**

#### **3.9.1 Proposal Contents**

Submittal requirements for the Proposal are set forth in Section 5 (Proposal Submittal Requirements) and Schedule A (Proposal Submittal Requirements) to this RFP.

The Proposal shall be organized and clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions, or assumptions; provided, however, that:

- (a) Proposers may document specific reservations, qualifications, conditions and assumptions associated with its Proposed Alignment in (i) Section 2-1 (Management Plan and Project Technical Approach, (ii) Section 2-2 (Design Concepts) and (iii) Section 3-3 (ROM Cost Estimate) of Schedule A (Proposal Submittal Requirements); and
- (b) Proposers will have the right to submit final comments to the Draft PDB Contract in accordance with Section 1-10 (PDB Contract Terms) of Schedule A (Proposal Submittal Requirements).

Failure to provide all information and all completed forms in the format specified or any submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions (other than as expressly permitted in this section of the RFP) may result in BPCA's rejecting or assigning the Proposal a lower rating. All blank spaces in the Proposal Forms must be filled in as appropriate. No substantive change shall be made to the Proposal Forms.

#### **3.9.2 Inclusion of Proposal in PDB Contract**

Following the conclusion of this procurement process and the execution and delivery of the PDB Contract, the PDB Contract will supersede this RFP and the Proposals. Portions of the successful Proposal (and potentially portions of the unsuccessful Proposals) will become part of the PDB Contract, as specified in the Draft PDB Contract or otherwise determined by BPCA in its discretion.

### **3.10 Modification and Withdrawal of Proposal**

A Proposer may withdraw its Proposal at any time prior to the Proposal Due Date by request of the Proposer submitted to BPCA via email. Withdrawal of a Proposal will not prejudice a Proposer's right to submit a new Proposal, provided the new Proposal is received before the Proposal Due Date and time specified in Section 3.1 (Procurement Schedule).

A Proposer may not withdraw or alter the pricing of a Proposal after the Proposal Due Date for at least 180 calendar days.

### **3.11 Property of BPCA**

All documents submitted by the Proposers in response to this RFP shall become the property of BPCA and will not be returned to the Proposers. By submitting a Proposal, each Proposer acknowledges and agrees that BPCA shall have the right to use (or permit the use of) all Proposal materials submitted pursuant to this RFP, including, without limitation, the Proposed Alignment, and all data, information, concepts and ideas contained therein, for all purposes associated with the continued development, implementation, design, construction, operation or maintenance of the Project, including all purposes specified herein. Each Proposer further acknowledges and agrees by submitting a Proposal that such rights are not conditioned or contingent upon the payment of any compensation to the Proposer. Any reuse of documents submitted by Proposers in response to this RFP, without the involvement of the applicable Proposer, will be at BPCA's risk and discretion and will in no way confer any liability on any unsuccessful Proposer.

### **3.12 Proposal Expenses**

Except as expressly provided in Section 8 (Proposal Work Product Payments) of this RFP, BPCA accepts no responsibility or liability for the costs or expenses incurred by the Proposers in responding to this RFP, in providing responses to clarification requests, in making resubmittals, in participating in any interviews or in connection with any other activities included as part of this procurement process. Each Proposer that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that, except pursuant to an executed Proposal Work Product Agreement and in accordance with its terms, they cannot make any claims whatsoever for reimbursement from BPCA or from any of its employees, advisors or representatives for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the Proposal, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

### **3.13 BPCA's Reserved Rights**

In connection with this procurement, BPCA reserves all rights (which rights shall be exercisable by BPCA at its sole discretion) available under applicable law and this RFP, including without limitation, with or without cause and with or without notice, the right to:

1. Waive any minor defect, irregularity, or technicality in the Proposals received;
2. Cancel or reissue this RFP in whole or in part at any time;
3. Require additional information from one or more Proposers to supplement or clarify the Proposals submitted, including the correction of arithmetic or other apparent errors for the purpose of ensuring a full and complete understanding of the Proposal and/or to determine a Proposer's compliance with the requirements of this RFP;

4. Conduct further independent investigations with respect to the qualifications and experience of each Proposer, or any team member included in a Proposal, and to request additional evidence to support any such information;
5. Seek or obtain data from any source related to the Proposals;
6. Interview one or more of the Proposers, in BPCA's sole discretion, in order to obtain clarification of information provided by the Proposer;
7. Disqualify any Proposer that fails to comply with this RFP, submits a nonconforming, nonresponsive, incomplete, inadequate, or (except as expressly permitted by Section 3.9.1 (Proposal Contents)) conditional Proposal, or is otherwise deemed during any stage of the procurement process to be unqualified or unable (due to inadequate financial capacity, litigation, past-performance or otherwise) to perform the Contract Services;
8. Reject any Proposal that is not responsive to the requirements of this RFP, or to disqualify any Proposer deemed to be unqualified during any stage of the procurement process, with no obligation to execute a Proposal Work Product Agreement with such Proposer or to pay any amount to any such Proposer;
9. Conduct PDB Contract negotiations with any Proposer who has tentatively been awarded the PDB Contract, including the next highest ranked Proposer should BPCA be unsuccessful in negotiating with the Highest Scoring Proposer;
10. Negotiate and make changes to any of the terms and conditions of the PDB Contract within the scope of this RFP, including but not limited to the Phase 1 Not to Exceed Price and Phase 2 Fixed Percentage Fee;
11. Request one or more best-and-final offers from two or more Proposers determined by BPCA to have a reasonable chance of being selected as the Design-Builder;
12. Utilize any and all ideas or information included in the Proposals received or obtained through the course of the procurement process;
13. Decide not to award a PDB Contract as a result of this procurement, for any reason;
14. Issue one or more Addenda to this RFP to extend the due date for the Proposals or for any other reason;
15. Take any other action affecting the procurement process or the Project that would be in the best interests of BPCA;
16. Reject any or all of the Proposals;
17. In order to assist the Evaluation Committee, appoint sub-evaluation teams and committees to review Proposals and seek the assistance of outside technical experts and consultants in evaluating the Proposals;
18. Change the composition of the Evaluation Committee;
19. Approve or disapprove all subcontractor selections on the Project;
20. Alter the bonding level requirements;



21. Modify, at any time before the Proposal Due Date, the factors BPCA will consider in evaluating the Proposals and otherwise revise or expand its evaluation methodology;
22. Suspend or terminate the PDB Contract procurement process at any time, including following receipt of a signed PDB Contract from the Design-Builder if it has not yet been executed by BPCA;
23. Decide not to award a PDB Contract as a result of this procurement process, for any reason; and
24. Exercise any other right reserved or afforded to BPCA under this RFP or applicable law.

The foregoing reserved rights are cumulative and the exercise of one right will not preclude the exercise of any other right. BPCA is under no obligation to exercise any reserved right hereunder.

## **4 PROPOSAL TEAMING REQUIREMENTS**

### **4.1 Continuity of Proposer Team; Changes in the Proposer's Organization**

For any Proposer to remain qualified to submit a Proposal after it has been shortlisted, the Proposer's organization as represented in its SOQ must remain intact for the duration of this procurement and throughout the Project, unless otherwise approved in writing by BPCA.

If a Proposer wishes to change the organization represented in its SOQ in connection with its Proposal (by adding, removing, or substituting any Proposer Team member previously identified in its SOQ, or by changing the role of one of these entities or individuals), such Proposer must submit to BPCA a written request to change its organization as soon as possible, but in no event later than one week prior to the Proposal Due Date set forth in Section 3.1 (Procurement Schedule). BPCA may extend or waive this deadline at its sole discretion. Specifically, the written request shall provide all information required by the RFQ for the original Key Personnel or Key Entity and include a side-by-side comparison that relates relevant minimum qualifications to each of the submittal requirements identified in Packages 3 and 4 of Schedule A of the RFQ. Side-by-side comparisons shall demonstrate that the proposed change is equal to or better than the Key Personnel or Key Entity identified in the original SOQ submittal, which decision shall be made by BPCA in its sole discretion. BPCA will use the criteria specified in the RFQ to evaluate all requests. BPCA reserves the right to re-score the SOQ based on any removal or substitution of Key Personnel and Key Entities and the re-score may result in (a) the SOQ score that is applied to the evaluation of Proposals pursuant to Section 6.5 (Total Scoring and Ranking) being lowered to reflect the re-score; or (b) the removal of a Proposer from the shortlist.

The Proposer must notify the Designated Contacts of any known changes to a member of the Proposer Team within one week of such change becoming known. Unauthorized changes to a Proposer Team at any time during the procurement process may result in disqualification.

### **4.2 BPCA Conflicts of Interest Policy**

Persons or entities may also be prohibited from joining or assisting a Proposer Team based on conflicts of interest. Proposers are directed to BPCA's conflict of interest policy available at [https://bpca.ny.gov/wp-content/uploads/2015/03/BPCA-83083-v1-Code of Ethics - June 2017-.pdf](https://bpca.ny.gov/wp-content/uploads/2015/03/BPCA-83083-v1-Code_of_Ethics_-_June_2017-.pdf). Individuals or entities included in, participating with or assisting a Proposer Team in violation of this policy will be grounds for disqualification of the Proposer or rejection of its Proposal. Proposers are further directed to BPCA's Procurement Guidelines available at <https://bpca.ny.gov/publicinformation>.

By executing Proposal Form 1 (Proposal Transmittal Letter), each Proposer will certify that the Proposer Team members have reviewed all of the engagements and pending engagements of the Proposer Team members, and that no potential exists for any conflict of interest or unfair advantage. If a Proposer has any concern regarding a potential conflict of interest, including the appearance thereof, or its ability to execute Proposal Form 1, such Proposer should contact the Designated Contact and disclose all relevant facts. BPCA will review the disclosed information and make a final determination as to such Proposer's eligibility to submit a Proposal.

### **4.3 Non-Collusion**

By executing Proposal Form 1 (Proposal Transmittal Letter), each Proposer will certify that any ensuing PDB Contract has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the PDB Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

#### 4.4 Restrictions on the Involvement of BPCA Advisory Team

Consultant firms or individuals who are or have been involved in the preparation of the RFQ or the RFP for the Project will not be allowed to submit a Proposal or participate on any Proposer's team in any capacity. Proposers are advised that the following firms (the "**Advisory Team**") and their affiliates are precluded from participating on any Proposer Team:

- AECOM USA, Inc. (Consulting Engineer)
- AKRF, Inc. (Consulting Engineer/Subconsultant)
- Arch Street Communications (Consulting Engineer/Subconsultant)
- The CSA Group (Consulting Engineer/Subconsultant)
- Ellana Cost Consultants (Consulting Engineer/Subconsultant)
- Gedeon GRC Consulting (Consulting Engineer/Subconsultant)
- Hawkins Delafield & Wood LLP (Procurement and Contract Counsel)
- Matrix New World (Consulting Engineer/Subconsultant)
- One Architecture (Consulting Engineer/Subconsultant)
- Sive Paget & Riesel, PC (Environmental Counsel)

BPCA may add or delete additional persons or firms to the list during any stage of the procurement process by issuing Addenda.

#### 4.5 MBE/WBE/SDVOB Participation; Equal Employment Opportunity

Contractor requirements and procedures for business participation opportunities for State certified MBEs/WBEs/SDVOBs and EEO requirements relating to minority group members and women are attached to this RFP in Proposal Form 4 (Minority And Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement) and Proposal Form 5 (Diversity Practices Questionnaire). Consistent with the terms of the PDB Contract, identification, solicitation, and selection of MBE/WBE/SDVOB subcontractors is anticipated to occur during both the Phase 1 Services Period and the Phase 2 Work Period. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the MBE/WBE/SDVOB Designated Contact.

#### 4.6 Iran Divestment Act

By submitting a Proposal, Proposers certify that they, including each Key Entity, are not on the Prohibited Entities List and further certify that, if selected as the Design-Builder, they will not utilize any subcontractor or sub-consultant that is identified on the Prohibited Entities List in connection with the PDB Contract. Any violation of these certifications will be grounds for disqualification of the Proposer and rejection of its Proposal. The PDB Contract will further specify remedial action BPCA may take in the event of a violation of these certifications by the Design-Builder.

#### 4.7 Encouraging Use of State Businesses in Contract Performance

State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in the State, Proposers are strongly encouraged and expected to consider State businesses in the fulfillment of the requirements of the PDB Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its State business partners. State businesses will promote the Design-Builder's optimal performance under the PDB Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of State businesses by its contractors. New York State therefore expects bidders/proposers to provide maximum assistance to State businesses in their contracts. The potential participation by all kinds of State businesses will deliver great value to the State and its taxpayers.

Proposers can demonstrate their commitment to the use of State businesses by responding to the question about State businesses included in Proposal Form 1 (Proposal Transmittal Letter).

## **5 PROPOSAL SUBMITTAL REQUIREMENTS**

### **5.1 Overview of Proposal Submittal Requirements**

Proposers shall submit a Proposal in accordance with the instructions provided in this Section. All Proposals shall be complete, with all requested information, data, and attachments. To facilitate review of Proposals, Proposers are urged to be thorough but concise.

### **5.2 Submittal Format**

The Proposal must be formatted in the manner, and include the information, required by Schedule A (Proposal Submittal Requirements). Such information shall be presented and organized in the same manner as set forth in Schedule A. Proposers should not include additional information in their Proposals that is not explicitly required by Schedule A.

### **5.3 Submittal Date and Method**

Proposals must be submitted to BPCA in accordance with the requirements of Schedule A (Proposal Submittal Requirements) and received at the following address by the Proposal Due Date and time set forth in Section 3.1 (Procurement Schedule):

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Michael LaMancusa

Each Proposer assumes full responsibility for timely delivery of its Proposal as required above. Any Proposal received after the submittal deadline may be deemed nonresponsive and preclude the Proposer from being considered for the Project. Oral, telephone, facsimile, or emailed Proposals are invalid and will not receive consideration. No Proposer may submit more than one Proposal, however, Proposers may amend their Proposal prior to the deadline set forth in Section 3.1 (Procurement Schedule).

### **5.4 Submittal Content**

The Proposals shall be submitted in three volumes:

Volume 1 – General Information Proposal

Volume 2 – Technical Proposal

Volume 3 – Price Proposal

The requirements for the content of Volumes 1, 2 and 3 are set forth in Schedule A (Proposal Submittal Requirements).

### **5.5 Proprietary or Confidential Information**

All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered to be confidential and exempt from FOIL. However, BPCA is obligated to disclose information consistent with the requirements of FOIL, State Public Officer's Law Section 87.

In order to assist BPCA in complying with any disclosure request, Proposers seeking to protect any information contained in their Proposals from disclosure must do the following:

- (a) Clearly mark all confidential, proprietary or trade secret information as such in its Proposal at the time such Proposal is submitted and include a cover sheet stating “DOCUMENT CONTAINS CONFIDENTIAL INFORMATION” and identifying each section and page which has been so marked;
- (b) Include a statement with its Proposal justifying the Proposer’s determination that the marked information is confidential and exempt from FOIL; and
- (c) Submit a copy of the full Proposal that has all confidential information redacted from the Proposal and label such copy of the Proposal: “Proposal Public Copy”.

No information shall be marked as confidential unless the Proposer has a reasonable basis for determining that such information is exempt under FOIL. In the event information marked as confidential or otherwise redacted from the submitted public copy of the Proposal is requested for release under applicable law, BPCA may release such information unless, prior to such release, the Proposer secures a protective or other appropriate order from a court of competent jurisdiction enjoining the release of the information. BPCA intends to use reasonable efforts to notify a Proposer prior to the release of any such information, but is under no obligation to do so. BPCA will not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked confidential in any Proposal, nor will BPCA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked confidential or otherwise. BPCA makes no representation or warranty as to the ability of any Proposer to secure a protective order or other relief enjoining the release of information marked confidential.

Proposers may not mark any part of a Proposed Alignment as confidential.

#### **5.6 Disqualification for Failure to Properly Package**

Failure to use sealed packages and envelopes to properly identify and label any Proposal package may result in an inadvertent opening of certain Proposal materials by BPCA prior to the desired time and place. If this occurs, a Proposal may be disqualified. It is the Proposer’s sole responsibility to ensure that its Proposal is received as required.

## **6 PROPOSAL EVALUATION**

### **6.1 General Evaluation Process**

BPCA will appoint the Evaluation Committee on or before the Proposal Due Date. While only Evaluation Committee members will score Proposals, the Evaluation Committee may consult with other BPCA employees or officials and with the Advisory Team in the evaluation of Proposals. BPCA's Evaluation Committee will evaluate the Proposals based on the information required to be provided in each part of Schedule A (Proposal Submittal Requirements) with respect to each evaluation criteria set forth in Section 6.5 (Total Scoring and Ranking).

BPCA has the right to conduct further, independent investigations of the information provided in the Proposals. This includes contacting and speaking with references. The Evaluation Committee may use any relevant information gathered by such investigation, and any other relevant information that comes to the attention of BPCA, to evaluate a Proposal. During the Proposal evaluation process, written questions or requests for clarifications may be submitted to one or more Proposers regarding its Proposal or related matters.

The evaluation and selection process will consist a responsiveness review and two-step evaluation of the Technical Proposal and Price Proposal, as set forth in this Section. Please refer to Schedule A (Proposal Submittal Requirements) for separate packaging requirements for the Price Proposal. BPCA will not open Volume 3 – Price Proposal/Part 1 (Committed Pricing) prior to final scoring of the Technical Proposals. Volume 3 – Price Proposal/Part 2 (ROM Cost Estimate) is not considered a “Cost Proposal” within the meaning of the BPCA procurement guidelines because it is non-binding on the Proposers. BPCA will therefore provide for the concurrent review of the ROM Cost Estimates with the Technical Proposals to help inform its evaluation of the Proposed Alignments and its decisions concerning the EIS scope of work, as described in Section 2.4.2 (EIS Process; Use of Proposed Alignments). However, the Technical Proposal evaluation will be based on the technical merits of each Technical Proposal, considering the BPCA Goals, and each ROM Cost Estimate will be separately evaluated as specified in Section 6.4 (Price Proposal Evaluation).

### **6.2 Responsiveness Review**

All Proposals will be reviewed in their entirety (i.e. the General Information Proposal, the Technical Proposal and the Price Proposal) for their responsiveness, including timely receipt of the Proposal and inclusion of all required forms and signatures; provided that the responsiveness review of Volume 3 – Price Proposal/Part 1 (Committed Pricing) will not occur until after final scoring of Technical Proposals. Any Proposal that is determined at any time to be nonresponsive to the submittal requirements set forth in Schedule A (Proposal Submittal Requirements) or incomplete in any material respect may be rejected in its entirety.

In addition, any material in the General Information Proposal that reflects a material negative change to anything originally submitted in the Proposer's SOQ may result in a Proposal being disqualified. At its sole discretion, the Evaluation Committee may waive any non-material deviations, defects, technicalities, or informalities and may request clarification or additional information. Except as provided in Section 4.1 (Continuity of Proposer Teams; Changes in the Proposer's Organization), the General Information Proposal will only be reviewed and evaluated as part of the responsiveness review.

### **6.3 Technical Proposal Evaluation & Interviews**

The Evaluation Committee will evaluate each Technical Proposal in accordance with the evaluation criteria set forth in Section 6.5 (Total Scoring and Ranking), subject to a determination

of responsiveness in accordance with this RFP. Reference checks and any post-Proposal submittal interviews will inform BPCA in scoring the Technical Proposal but will not be separately scored. The Evaluation Committee reserves the right to revise scores of the Technical Proposals based on clarifications received during any post-Proposal submittal interviews. Individual Meetings held prior to the submittal of Proposals will not be scored or be part of the scoring process. The Technical Proposal and the Price Proposal will be separately evaluated, as set forth in Section 6.5 (Total Scoring and Ranking).

The Evaluation Committee will use the categories below to determine the number of points to be assigned to each evaluation criterion for each Technical Proposal by:

- (a) determining the appropriate qualitative category (i.e. excellent, good, fair or deficient);
- (b) assigning a specific percentage from within such qualitative category (i.e. 81 to 100 percent for “excellent”); and
- (c) multiplying such percentage by the maximum points possible (as set forth in Section 6.5 (Total Scoring and Ranking)) for the applicable evaluation criterion.

The product of such calculation will be the final score for such evaluation criterion. The qualitative categories and the range of percentages possible within each qualitative category are as follows:

**Excellent (81-100 percent):** The response in the Proposal to a specific evaluation criterion demonstrates an approach that is considered likely to exceed the BPCA Goals and the RFP requirements. The minimum allocation of points for “excellent” is 81 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths or the number of strengths will result in a higher percentage, up to a maximum of 100 percent. An evaluation criterion that is evaluated as “excellent” is considered to present virtually no risk that the Proposer would be unsuccessful in delivering the Project to BPCA's satisfaction.

**Good (61-80 percent):** The response in the Proposal to a specific evaluation criterion demonstrates an approach that is considered likely to meet the BPCA Goals and RFP requirements. The minimum allocation of points for “good” is 61 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths or the number of strengths, and the fewer the minor weaknesses will result in a higher percentage, up to a maximum of 80 percent. An evaluation criterion that is evaluated as “good” is considered to have little risk that the Proposer would be unsuccessful in delivering the Project to BPCA's satisfaction and would most likely meet all BPCA Goals.

**Fair (41-60 percent):** The response in the Proposal to a specific evaluation criterion demonstrates an approach that is considered likely to fall slightly short of meeting the BPCA Goals and RFP requirements. The minimum allocation of points for “fair” is 41 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths or the number of strengths, and the fewer the minor or significant weaknesses will result in a higher percentage, up to a maximum of 60 percent. An evaluation criterion that is evaluated as “fair” is considered to have some risk that the Proposer would be unsuccessful in delivering the Project to BPCA's satisfaction and meeting all BPCA Goals.

**Deficient (0-40 percent):** The response in the Proposal to a specific evaluation criterion demonstrates an approach that is considered unlikely to meet BPCA Goals and RFP requirements. The minimum allocation of points for “deficient” is 0 percent. The greater the significance of the strengths or the number of strengths, and the fewer the minor or



significant weaknesses will result in a higher percentage, up to a maximum of 40 percent of the maximum points available for a given evaluation criterion. An evaluation criterion that is evaluated as “deficient” is considered to present a significant risk of not being able to deliver the Project to BPCA's satisfaction and meet the BPCA Goals. BPCA, at its sole discretion, may reject any Proposal deemed “deficient” in any evaluation criterion.

#### 6.4 Price Proposal Evaluation

Upon final scoring of the Technical Proposals, BPCA will open each Proposer's Volume 3 – Price Proposal/Part 1 (Committed Pricing), determine the responsiveness of each element of the Price Proposal and complete the Price Proposal evaluation for each responsive Proposer in accordance with this Section.

The proposed “Phase 2 Fixed Percentage Fee” set forth in Section 3-1 of each Price Proposal will be evaluated based on the difference between the Proposer's proposed Phase 2 Fixed Percentage Fee and the average of the Phase 2 Fixed Percentage Fee proposed by each responsive Proposer, based on the following formula:

$$\text{Phase 2 Fixed Percentage Fee Score} = 18 \times \frac{\text{Average Proposed Phase 2 Fixed Percentage Fee}}{\text{Phase 2 Fixed Percentage Fee Being Evaluated}}$$

Each responsive Proposer that proposes a Phase 2 Fixed Percentage Fee that is less than the average Phase 2 Fixed Percentage Fee will receive 18 points for the Phase 2 Fixed Percentage Fee score.

BPCA will evaluate the Phase 1 Not to Exceed Amount set forth in Section 3-2 of the Price Proposal based on the difference between the Proposer's proposed Phase 1 Not to Exceed Amount and the lowest Phase 1 Not to Exceed Amount proposed by the responsive Proposers, using the following formula:

$$\text{Phase 1 Not to Exceed Amount Score} = 9 \times \frac{\text{Lowest Proposed Phase 1 Not to Exceed Amount}}{\text{Phase 1 Not to Exceed Amount Being Evaluated}}$$

BPCA will additionally evaluate the Phase 1 Not to Exceed Amount for consistency with the information provided in Section 2-5 (Phase 1 Services Hours and Additional Tasks) of the Technical Proposal. If any proposed Phase 1 Not to Exceed Amount is not consistent with such information, BPCA reserves the right to award zero points for such Phase 1 Not to Exceed Amount and to exclude such Phase 1 Not to Exceed Amount from consideration in the formula above.

BPCA reserves the right to negotiate the Phase 1 Not to Exceed Amount and the Phase 2 Fixed Percentage Fee with the Highest Scoring Proposer. If no satisfactory resolution is achieved, BPCA may enter into negotiations with the next highest ranking Proposer.

BPCA will similarly evaluate the ROM Cost Estimate set forth in Section 3-3 of the Price Proposal using the following formula:

$$\text{ROM Cost Estimate Score} = 3 \times \frac{\text{Lowest Proposed ROM Cost Estimate}}{\text{ROM Cost Estimate Being Evaluated}}$$

BPCA will independently assess the credibility of each submitted ROM Cost Estimate. If BPCA determines that any submitted ROM Cost Estimate is not credible (i.e., the ROM Cost Estimate does not reasonably reflect BPCA's estimated cost of the Proposer's Proposed Alignment), BPCA reserves the right to award zero points for such ROM Cost Estimate and to exclude such ROM Cost Estimate from consideration in the formula above. BPCA reserves the right to discuss the Proposer's ROM Cost Estimate with such Proposer, and following any such discussions re-

evaluate the ROM Cost Estimates. If following any such discussions with the Highest Scoring Proposer no satisfactory resolution is achieved, BPCA may enter into negotiations with the next highest ranking Proposer.

## 6.5 Total Scoring and Ranking

The Evaluation Committee will determine the final ranking of all responsive Proposers, from highest to lowest, based on the evaluation criteria set forth in this Section. The highest ranking Proposer will be determined to be the Highest Scoring Proposer.

The Evaluation Committee will evaluate the responsive Proposals (as informed by the interviews) using the criteria and weightings as set forth in the following table:

<b>Evaluation Criteria</b>	<b>Basis of Evaluation</b>	<b>Points Possible</b>
<b>General Information Proposal</b>	<b>Volume 1 of Schedule A</b>	<b>N/A</b>
<b>Technical Proposal</b>	<b>Volume 2 of Schedule A</b>	<b>60</b>
Management Plan and Project Technical Approach	Section 2-1 and Section 2-5 (as applicable) of Volume 2 of Schedule A	10
Design Concepts	Section 2-2 of Volume 2 of Schedule A	20
Scheduling, Sequencing, and Phasing Approach	Section 2-3 and Section 2-5 (as applicable) of Volume 2 of Schedule A	10
Subcontracting Approach and Open Book Pricing Approach	Section 2-4 and Section 2-5 (as applicable) of Volume 2 of Schedule A	10
MBE/WBE/SDVOB Requirements	Section 2-6, Section 2-7 and Section 2-8 of Volume 2 of Schedule A	10
<b>Price Proposal</b>	<b>Volume 3 of Schedule A</b>	<b>30</b>
Phase 2 Fixed Percentage Fee	Section 3-1 of Volume 3 of Schedule A and the formula set forth in Section 6.4 (Price Proposal Evaluation)	18
Phase 1 Not to Exceed Amount	Section 3-2 of Volume 3 of Schedule A and the formula set forth in Section 6.4 (Price Proposal Evaluation)	9
ROM Cost Estimate	Section 3-3 of Volume 3 of Schedule A and the formula set forth in Section 6.4 (Price Proposal Evaluation)	3
<b>10% of the Proposer's final SOQ Score</b>	<b>SOQ Scores</b>	<b>10</b>
	<b>TOTAL</b>	<b>100</b>

## 6.6 Proposal Selection and PDB Contract Finalization

Following any interviews and full review of the Proposals, BPCA intends to finalize its evaluation and selection based on the scores prepared by the Evaluation Committee.

BPCA will notify all Proposers of the Highest Scoring Proposer selection decision within two business days after notifying the Highest Scoring Proposer of their selection. BPCA will then begin finalizing the PDB Contract with the Highest Scoring Proposer, all subject to BPCA's reserved rights. Such contract finalization will include incorporation of Proposal materials, as specified in Section 3.9.2 (Inclusion of Proposal in PDB Contract).

In Proposal Form 1 (Proposal Transmittal Letter), Proposers are required to agree to negotiate in good faith to enter into a PDB Contract that reflects the substantive terms and conditions of this RFP and the Proposal. BPCA expects that the Draft PDB Contract review and comment process completed prior to the submittal of Proposals will result in a substantially agreed upon form of the final PDB Contract. Therefore, it is BPCA's intent to limit discussion and negotiation of the terms of the Draft PDB Contract to those items submitted in accordance with Section 1-10 (PDB Contract Terms) of Schedule A (Proposal Submittal Requirements) with the Proposer's General Information Proposal. BPCA will have the discretion to accept, reject or negotiate any proposed change to the final Draft PDB Contract. Unless there is an Uncontrollable Circumstance occurring between the Proposal Due Date and the Contract Date, BPCA does not intend to discuss or negotiate any issue, term or condition that is not specifically identified in Section 1-10 (PDB Contract Terms) of Schedule A (Proposal Submittal Requirements). In the event that the Highest Scoring Proposer raises any such unidentified issue, term or condition, BPCA reserves the right to terminate negotiations with such Highest Scoring Proposer.

In the event BPCA cannot finalize a PDB Contract with the Highest Scoring Proposer for any reason, BPCA may, in its discretion, terminate such negotiations and proceed into negotiations with the next highest scoring Proposer. The final PDB Contract and its award will be subject to Board approval.

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## **7 DEBRIEFING AND PROTEST PROCEDURES**

### **7.1 Debriefing**

Within 14 calendar days after execution and delivery of the PDB Contract, BPCA will be available for an oral debriefing session upon written request made to the Designated Contacts by an authorized representative of an unsuccessful Proposer. Protests shall be conducted in accordance with this Section 7 (Debriefing and Protest Procedures).

### **7.2 Protests Generally**

The remainder of this Section sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. These protest procedures are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

All protests and related materials shall be filed in writing, by hand delivery or courier, to the BPCA Procurement Department at the following address in accordance with this Section 7:

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Procurement Department

Upon receipt of a protest, the BPCA Procurement Department will designate an individual responsible for handling the protest (a “**Protest Official**”) in accordance with this Section 7.

If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend, protect, and hold harmless BPCA, its officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys’ fees and costs), fees, and damages incurred or suffered as a result. The submission of a Proposal by a Proposer shall be deemed the Proposer’s irrevocable and unconditional agreement with such indemnification obligation.

### **7.3 Protests Regarding the RFP**

The Proposer may protest the terms of this RFP prior to the time for submission of Proposals on the grounds that (a) a material provision in this RFP is ambiguous; (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (c) this RFP in whole or in part exceeds the authority of BPCA. Protests regarding this RFP shall be filed in accordance with this Section 7 (Debriefing and Protest Procedures) and only after the Proposer has submitted a written request for clarification prior to the Proposal Due Date in an effort to remove the grounds for protest.

Protests regarding this RFP shall be in writing and shall completely and succinctly state the grounds for protest. Protests regarding this RFP shall be filed as soon as the basis for protest is known to the Proposer, but in any event it must be actually received no later than 10 calendar days before the Proposal Due Date, provided that protests regarding any Addenda shall be filed and actually received no later than five calendar days after the issuance of any such Addenda (or no later than the Proposal Due Date, if earlier).

The Protest Official is not required to hold a hearing on the protest, and may decide the protest on the basis of the written submissions. The Protest Official or its designee shall undertake reasonable efforts to issue a written decision regarding the protest within fifteen (15) calendar days after the date the Protest Official receives the detailed statement of protest. The decision

shall be final and conclusive. The Protest Official or its designee shall deliver the written decision to the protesting Proposer and may deliver copies to other Proposers. BPCA may make appropriate revisions to this RFP, to address issues raised in the protest, by issuing Addenda. At its discretion, BPCA may extend the Proposal Due Date to address any protest issues. Each party shall bear its own attorney's fees and legal costs that may result from any protest filed in accordance with this Section 7 (Debriefing and Protest Procedures).

The failure of a Proposer to raise the grounds for a protest regarding this RFP within the applicable time period shall constitute an unconditional waiver of the right to protest the terms of this RFP and shall preclude consideration of that ground in any protest regarding responsiveness or determination of award.

BPCA may, in its sole discretion, determine to pause this procurement pending resolution of a protest or to continue the procurement process notwithstanding any pending protest.

#### **7.4 Protests Regarding Responsiveness Determination or Award**

A Proposer may protest any determination by BPCA regarding lack of responsiveness or any award made by BPCA by filing a written notice of protest by hand delivery or courier to the Protest Official. The notice of protest shall be in writing and shall specifically state the grounds of the protest.

Notice of protest of any non-responsiveness determination must be filed within five calendar days after the notification of non-responsiveness. Notice of protest of any award by BPCA must be filed within 10 calendar days after BPCA's announcement of the Highest Scoring Proposer.

Within 10 calendar days of the notice of protest, the protesting Proposer must file its detailed statement of protest with the Protest Official. The protest must include a detailed written statement of the basis for its protest.

Failure to file a notice of protest or a detailed statement within the applicable time period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder.

BPCA may distribute copies of the protest to the other Proposers and may request other Proposers to submit statements or arguments regarding the protest. At its discretion, BPCA may authorize appropriate BPCA representatives to discuss the protest with the protesting Proposer.

If the Protest Official or its designee concludes that the Proposer filing the protest has established a basis for protest, the Protest Official or its designee will determine what remedial steps, if any, are necessary or appropriate to address the issue raised in the protest. The steps may include, but are not limited to, submitting the issue to the Evaluation Committee to determine whether the scoring or Proposals ought to be revised; issuing a new RFP; or taking other appropriate actions.

#### **7.5 Judicial Review**

If the protest is denied, the protesting Proposer may, as its sole and exclusive remedy, seek judicial review of BPCA's decision in State court located within the County of New York within five (5) calendar days of receiving BPCA's decision denying the protest. Each party shall bear its own attorney fees, expert witness fees, and all other legal costs for any legal proceedings associated with a protest filed in accordance with this Section 7 (Debriefing and Protest Procedures).

#### **7.6 Costs and Damages**

BPCA shall not be liable for damages to the Proposer filing the protest or to any participant in the protest, on any basis, express or implied.

## **8 PROPOSAL WORK PRODUCT PAYMENTS**

In consideration for the substantial effort BPCA expects from Proposers during this RFP process in order to deliver a responsive Proposal, BPCA will pay \$275,000 to each Proposer who:

- (a) submits an executed Proposal Form 6 (Proposal Work Product Agreement) and an invoice (as set forth in Attachment A to Proposal Form 6),
- (b) submits a Responsive Proposal (as defined in Proposal Form 6 and determined by BPCA); and
- (c) does not enter into the PDB Contract with BPCA, as further described in Section 3 (Compensation and Payment) of Proposal Form 6.

Subject to the foregoing requirements, BPCA will execute each Proposal Work Product Agreement for each unsuccessful Proposal and pay \$275,000 within 45 calendar days after award of the PDB Contract or a decision by BPCA not to award a PDB Contract and to cancel this procurement following receipt of Proposals.

No Proposer shall be entitled to reimbursement of any of its costs in connection with the RFP except as specified in this Section. A Proposer that has submitted a nonresponsive Proposal will not earn a payment pursuant to this Section.

**SCHEDULE A****PROPOSAL SUBMITTAL REQUIREMENTS****Mediums and Packaging:**

The Proposal shall consist of the following two divisions which shall be separately packaged to avoid any inadvertent commingling of the General Information Proposal and Technical Proposal with the Price Proposal:

**1) General Information Proposal and Technical Proposal (Volume 1 and Volume 2)**

Each Proposer shall submit its General Information Proposal (Volume 1) and Technical Proposal (Volume 2) as separate volumes packaged together in both of the following mediums:

- (a) One USB flash drive containing an electronic copy of Volume 1 and Volume 2 of the Proposal in text searchable PDF format with the sections and subsections bookmarked.
- (b) One bound, original, hard copy of Volume 1 and a separate bound original hard copy of Volume 2 of the Proposal.

Proposers may provide a separate bound hard copy containing only the design drawings and logistics/phasing drawings required as part of the Technical Proposal (Volume 2). If a separate bound hard copy of the drawings is provided, each hard copy shall be labeled as "Volume 2 – Technical Proposal" and "Volume 2 – Technical Proposal – Drawings".

**2) Price Proposal (Volume 3)**

Each Proposer shall submit its Price Proposal (Volume 3) in in two parts, separately packaged. Part 1 of Volume 3 shall be labeled "Committed Pricing" and shall include all information required by Section 3-1 (Phase 2 Fixed Percentage Fee) and Section 3-2 (Phase 1 Not to Exceed Amount). Part 2 of Volume 3 shall be labeled "ROM Cost Estimate" and shall include all information required by Section 3-3 (ROM Cost Estimate). Each such part of Volume 3 shall be submitted in both of the following mediums:

- (a) One USB flash drive containing an electronic copy of the applicable part of Volume 3 of the Proposal in text searchable PDF format with the sections and subsections bookmarked.
- (b) One bound, original, hard copy of each applicable part of Volume 3 of the Proposal.

The original, hard copy, and USB flash drive for each of the two parts of the Price Proposal shall be packed into separate sealed packages marked "Volume 3 - Price Proposal/Part 1 (Committed Pricing)" and "Volume 3 – Price Proposal/Part 2 (ROM Cost Estimate)", respectively, prior to being packed in one sealed package containing the original, hard copy and USB flash drive for the General Information Proposal and Technical Proposal for delivery to BPCA.

The outside of the combined sealed package shall be clearly identified, labeled, and addressed with the following:

- (a) A return address including the Proposer's name, contact person's name, and mailing address.
- (b) The address of the BPCA Contract Ad & Award Office, as indicated in Section 5.3 (Submittal Date and Method).
- (c) "North/West Battery Park City Resiliency Project" and "Proposal".
- (d) The date of the Proposal.

**Formatting:**

The Proposal shall be formatted as follows:

- (a) Language – All information shall be in English.
- (b) Type Font and Size – All narrative text shall be single-spaced in a regular style font at a minimum of 12 points. The type, style, and size of headings and figures are not prescribed. The minimum font size for charts, exhibits, and other illustrative and graphical information shall be 9 point font.
- (c) Page Size – With the exception of a team organizational chart, project schedule and design concept drawings, all information shall be, when printed, on 8.5-inch by 11-inch paper. The team organization chart, project schedule and design concept drawings may be, when printed, on 11-inch by 17-inch paper.
- (d) Page Margins – No text, tables, figures, photos, or other substantive content shall be printed within 0.75 inches of any page edge; provided, however this requirement shall not apply to drawings printed on 11-inch by 17-inch paper.
- (e) Page Limit – There is no page limit, except as otherwise indicated in this Schedule A (Proposal Submittal Requirements). To the extent that this Schedule A indicates a page limit, a “page” is defined as, when printed, a single side of an 8.5-inch by 11-inch sheet of paper. The Proposal shall include only information required by this RFP. BPCA reserves the right to remove pages that exceed any specified page limit prior to evaluation.
- (f) Dividers – Section dividers shall contain, at a minimum, one of the following:
  - 1. Section number
  - 2. Section titleNo other text is permitted on the dividers. The dividers will not be counted toward the allowable page total.
- (g) Front Page – The front page of each Proposal shall be labeled with the name of the Proposer, along with the following:

North/West Battery Park City Resiliency Project  
Proposal
- (h) Digital signatures are acceptable for all mediums.
- (i) Electronic File Name

The file name of the .pdf documents shall be:  
BPCA PDB Project [INSERT NAME OF PROPOSER].pdf

**Content:**

Information must be provided in a response format in accordance with this Schedule A, in tabbed sections using the section numbers and titles provided in the table below. Proposals should be simple and provide a concise description of the requested information. To the extent any section of the Proposer’s Proposal would repeat the same information provided in another section of the Proposal, the Proposer may choose to include such information only once and refer the reader to the specific location of the Proposal where the duplicative information may be found.

The proposed Phase 2 Fixed Percentage Fee and Phase 1 Not to Exceed Amount, including hourly rates and expense information related to the Phase 1 Not to Exceed Amount, must be included only in Volume 3 - Price Proposal/Part 1 (Committed Pricing). The inclusion of such information in any other part of a Proposal may result in disqualification of a Proposer.



**Proposal Organization:****VOLUME 1 – GENERAL INFORMATION PROPOSAL**

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
1-1	Table of Contents	The first page of the Proposal following the cover page must be a table of contents, itemizing the contents of the Proposer's submission. The table of contents may include a proprietary statement with the intent to identify pages and material considered "confidential", "trade secret", or "proprietary" as described in Section 5.5 (Proprietary or Confidential Information).
1-2	Proposal Transmittal Letter	<p>The Proposer shall complete and attach Proposal Form 1 (Proposal Transmittal Letter). The proposal transmittal letter must be fully-executed and on the Proposer's letterhead. The proposal transmittal letter shall include the name of the Proposer, Proposer Team members, Proposer contact person information, and all information required by Proposal Form 1.</p> <p>The proposal transmittal letter shall be signed by a representative of the Proposer who is empowered to sign it and commit the Proposer to the obligations contained in the Proposal.</p>
1-3	Executive Summary	An Executive Summary shall be submitted and shall not exceed two pages. The Executive Summary shall provide an overview of the Proposer's approach to delivering the Project.
1-4	Changes to Financial Capability	The Proposer shall affirm the submitted SOQ and prequalification information regarding the Proposer's financial standing. If any material change has occurred, provide all relevant information regarding such change.
1-5	Changes to Technical Qualifications and Experience	The Proposer shall affirm the submitted SOQ information regarding the Proposer's technical qualifications and experience. If any part of the submitted Proposal information has materially changed, or if it is expected to change prior to or during the execution of the PDB Contract, please include a detailed listing and description, or state that there are no changes.
1-6	Team Organization Chart	<p>The Proposer shall submit an updated SOQ organizational chart(s). Any inconsistencies or revisions to the information provided in the submitted SOQ organizational chart shall be highlighted and explained or state that there are no changes.</p> <p>Proposers must recognize that Key Personnel included in the submitted SOQs have been used as a basis for short-listing the Proposers and, as such, BPCA expects that Key</p>

		<p>Personnel identified in the SOQs will be utilized in the Project.</p> <p>Any changes to the Proposer Team since submission of the SOQs shall be highlighted in the Proposal, subject to Section 4.1 (Continuity of Proposer Team; Changes in the Proposer's Organization).</p>
1-7	Insurance Company Letter of Intent	<p>Following award of the PDB Contract, the selected Design-Builder, at the Design-Builder's sole cost and expense and for the full term of the PDB Contract or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Appendix 11 (Insurance Requirements) of the Draft PDB Contract.</p> <p>Proposers shall provide a completed Proposal Form 2 (Insurance Company Letter of Intent) from the Proposer's proposed insurance company or authorized broker acknowledging, among other things, that the Proposer's insurance company has reviewed and understands the requirements of this RFP and that the insurance company intends to furnish the required insurance set forth in Appendix 11 (Insurance Requirements) of the Draft PDB Contract in the event a PDB Contract is executed between the Proposer and BPCA.</p>
1-8	Surety Company Letter of Intent for Security, Performance and Payment Bonds	<p>Proposers shall provide a completed Proposal Form 3 (Surety Company Letter of Intent) from the Proposer's proposed surety acknowledging, among other things, that the Proposer's surety has reviewed and understands the requirements of this RFP and the Draft PDB Contract and that the surety intends to furnish the Security Bond, Performance Bond and Payment Bond required by the PDB Contract in favor of BPCA.</p>
1-9	Proposal Work Product Agreement and Invoice	<p>If the Proposer wishes to be eligible to receive a payment pursuant to Section 8 (Proposal Work Product Payments), the Proposer shall execute and deliver Proposal Form 6 (Proposal Work Product Agreement) and the invoice attached thereto.</p>
1-10	PDB Contract Terms	<p>The Proposer shall either (a) confirm that the terms and conditions of the final Draft PDB Contract are acceptable to the Proposer, or (b) propose any changes to the final Draft PDB Contract the Proposer wishes to discuss with BPCA if determined to be the Highest Scoring Proposer.</p> <p>Any proposed changes included in this Section 1-10 must be limited to matters that (a) the Proposer has previously raised in writing or (b) are in response to a change made to the Draft PDB Contract after the deadline for Proposer questions.</p> <p>Any proposed changes shall be described both in (1) a mark-up of the text of the final Draft PDB Contract in blacklined form showing the specific changes requested, and (2) a</p>

		narrative setting out the rationale for the requested change, either in the mark-up itself or in a separate written submittal, or both.
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**VOLUME 2 – TECHNICAL PROPOSAL**

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
2-1	Management Plan and Project Technical Approach	<p>The Proposer shall submit a Project approach narrative describing how the Proposer Team will manage and deliver the Project to achieve the BPCA Goals. The Proposer shall describe its philosophy and approach to the design and construction for completing the Project by the required completion date and within budget.</p> <p>The elements to address include, but are not limited to:</p> <p><b>A. Project Management and Accountability:</b></p> <p>(1) <b>Overall Project Management</b> - Describe the Proposer's overall management plan that comprehensively addresses major elements of work as described in this RFP, including the Draft PDB Contract, and includes the following:</p> <ul style="list-style-type: none"> <li>a. Approach to track design and construction schedules and identifying opportunities and constraints associated with meeting the Project milestones as detailed in Section 2.5 (Project Milestones) of this RFP, through a collaborative process with BPCA;</li> <li>b. Approach to monitoring costs and trends against their earned value, and ensuring all Phase 1 Services are completed within the agreed upon not to exceed budget for such Phase 1 Services;</li> <li>c. Methodology for scope control and approach to change management during planning, design, and construction; and</li> <li>d. Approach to progress reporting with examples of monthly project reports that have been utilized on other projects to successfully and concisely provide the client with an update similar to that described in Appendix 2 (Phase 1 Services) of the Draft PDB Contract.</li> </ul> <p>(2) <b>Design Approach:</b> Describe the Proposer's overall approach to design development and management for the Project that considers major design elements of work as described in Appendix 2 (Phase 1 Services) of the Draft PDB Contract and specifically addresses the</p>

		<p>following:</p> <ul style="list-style-type: none"> <li>a. Providing efficient process to review and verify existing site conditions (including, but not limited to, subsurface and surface utilities, environmental conditions, and encroachments) and document them as a baseline condition. Summarize key activities that will be performed to obtain all key information and anticipated timeline;</li> <li>b. With particular reference to the unique timing issues described in Section 2.2 (Project Status) and Section 2.4.2 (EIS Process; Use of Proposed Alignments), the approach to identifying and evaluating design alternatives and selecting the preferred alignment that considers stakeholder input, BPCA budget objectives (see Section 2.6 (Project Funding and Budget)), early work packages, material procurement, etc. and provides balanced design solutions to meet the Project needs;</li> <li>c. Approach to identifying and resolving utility conflicts, including utility relocations that minimize impacts and risk to project scope, schedule, and budget; and</li> <li>d. Approach to determining appropriate amount of additional geotechnical borings and investigations that considers geotechnical investigation costs, design requirements, and minimizes Project risk related to differing site conditions.</li> </ul> <p>(3) <b>Construction Approach:</b> Describe the following:</p> <ul style="list-style-type: none"> <li>a. The process that will be used to identify opportunities for cost savings in construction means and methods, staging, advance material procurement, construction access and temporary works.</li> <li>b. The process that will be used to identify opportunities for cost savings through adaptive management of applicable construction activities over time.</li> <li>c. The process to ensure active schedule management, risk management, quality management, and cost controls.</li> </ul> <p><b>B. Collaboration and Partnership:</b></p> <ul style="list-style-type: none"> <li>(1) One of the primary objectives for the Project is to create a highly functioning, collaborative and integrated team as early as possible and to incorporate BPCA's staff and consultants as part of that team. <ul style="list-style-type: none"> <li>a. Explain the Proposer's approach to creating and facilitating a collaborative and partnering environment for this Project.</li> </ul> </li> </ul>
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		<p>b. Provide the Proposer's approach to conflict resolution between BPCA and the Design-Builder and among members of the Proposer Team.</p> <p>(2) Describe the Proposer's approach that provides opportunity for collaboration with key stakeholders and permitting agency staff throughout the project resulting in efficient approvals while also controlling scope creep and Project budget.</p> <p>(3) Describe the Proposer's approach to incorporating and utilizing construction personnel in an integrated delivery during Phase 1 Services and during Phase 2 Work.</p> <p>(4) Describe the Proposer's approach to working with BPCA to manage the permitting process with respect to SEQRA/CEQR, the BPCA-designated Governmental Approvals and other permits for which the Design-Builder is responsible.</p> <p>The entirety of this section, not including the examples of monthly project or other similar reports noted in sub-section 2-1.A.(1).d, is limited to 15 pages.</p>
2-2	Design Concepts	<p><b>Drawings.</b> The Proposer shall provide a base Proposed Alignment in plan view, at a 1:40 scale, with secondary options or considerations at the Proposer's option at key or significant locations. Based on seven Project Reaches (as such Project Reaches are identified in the Project Technical Criteria) and two sections per Project Reach, a total of 14 sections on seven additional drawings are anticipated. In addition to plan and section drawings, one axonometric projection for each of the seven Project Reaches shall be provided for a total of seven axonometric projections. Proposers may also include logistics/phasing drawings in addition to the drawings described above.</p> <p><b>Narrative.</b> The base Proposed Alignment, with secondary options or considerations at the Proposer's option, shall be accompanied by a narrative that presents the Proposer's specific technical approach to the Project. The narrative shall clearly describe and articulate the following:</p> <ol style="list-style-type: none"> <li>1. Overview of Project understanding, including a thorough description of how the proposed design addresses and complies with the Project Technical Criteria.</li> <li>2. A description of how the design concepts achieve the BPCA Goals.</li> <li>3. Discussion on how the Proposer proposes to commission and acceptance test the Project as part</li> </ol>

		<p>of achieving substantial completion so as to best assure a long-term performance capability. The discussion shall include an identification of risks and limitations that BPCA should consider in establishing the requirements for the acceptance standards and the acceptance test.</p> <ol style="list-style-type: none"> <li>4. Identification of processes and performance testing that the Proposer recommends for pilot investigations, if any.</li> <li>5. The technologies proposed for the Project must have a proven performance record. Specifically, the Proposer must provide at least three examples of completed projects (preferably similar in scope and scale of the Project) that have utilized the technologies proposed for the Project. Proposer must provide supporting information to demonstrate the proven effectiveness and reliability of the chosen technical solutions.</li> </ol> <p><b>Prior Experience with Proposed Technologies.</b></p> <ol style="list-style-type: none"> <li>1. Discussion on where the Proposer Team has designed or constructed facilities that utilize the same design concepts being proposed for the Project and how those projects are performing.</li> <li>2. The Proposer shall provide a narrative that outlines the Proposer Team's qualifications and experience in developing projects that utilize similar approaches, designs and technology described in this Section of this Proposal</li> </ol> <p>The "Narrative" and "Prior Experience with Proposed Technologies" sub-sections are limited to a total of 15 pages.</p>
2-3	Scheduling, Sequencing, and Phasing Approach	<p>The scheduling, sequencing and phasing approach shall consider efficiency of construction, maintenance of public access, timing of SEQRA/CEQR and environmental permits, incorporation of any interior drainage infrastructure, timing of site access, utility relocations, etc., including:</p> <ol style="list-style-type: none"> <li>(1) Provide a preliminary Project milestone schedule. The Proposer's milestone schedule shall be based on the Proposed Alignment and identify major elements, durations and key milestones for the Phase 1 Services and Phase 2 Work. This preliminary Project milestone schedule shall be based on and expanded from the data provided in Section 2.5 (Project Milestones) of this RFP.</li> <li>(2) Identify any Early Work Packages that the Proposer recommends for further development</li> </ol>

		<p>during the Phase 1 Services Period.</p> <p>(3) Discuss any prominent concerns with the ability to meet the proposed schedule, including the milestone completion dates set forth in Section 2.5 (Project Milestones) and how the Proposer will manage the performance of the Contract Services to address such concerns and any alternative scheduling suggestions.</p> <p>(4) Identify any creative scheduling-related concepts that the Proposer believes would benefit the Project and create float in the Project Schedule for achieving the Project milestones.</p> <p>Refer to Section 2.5 (Project Milestones) for assumed start date for the execution of the PDB Contract and Phase 1 Services NTP.</p> <p>The preliminary project milestone schedule is limited to three pages and the entirety of this section is limited to ten pages.</p>
2-4	Transparent Pricing and Subcontracting Approach	<p>The submittal requirements for Transparent Pricing and Subcontracting Approach shall include the following:</p> <p><b>Transparent Pricing:</b></p> <p>(1) Proposer's approach to developing a mutually agreed cost model and pricing, and specifically explain how the Proposer will approach transparency for any proposed self-performed work.</p> <p>(2) Processes and resources that will be used to develop cost estimates with full transparency through open book pricing of materials, equipment, labor, and production rates, including but not limited to any proposed self-performed work.</p> <p>(3) Examples of software, spreadsheets, etc. used to show full transparency in production based cost estimates for material costs, equipment rates, labor hours, and production rates.</p> <p>(4) Proposer's approach to controlling budget by using a cost model to compare progress estimates against the model baseline at the work breakdown structure level. Examples shall be provided of tables and graphs that will be utilized to present the model output and comparison of progress to baseline;</p> <p>(5) Proposer's approach to avoiding surprises in unexpected cost increases in progress estimates and the GMP Proposal. Examples shall be provided of trending costs and schedule on a regular basis and identifying opportunities or</p>

		<p>constraints associated with meeting the budget.</p> <p><b>Controlling BPCA's Budget and Subcontracting Approach:</b></p> <ol style="list-style-type: none"> <li>(1) Describe Proposer's approach to balancing work proposed for self-performance or through pre-approved Subcontractors versus work that will be competitively bid to provide overall cost competitiveness.</li> <li>(2) Identify anticipated percentage of work proposed for self-performance or through pre-approved Subcontractors and describe Proposer's approach to ensuring the anticipated self-performed work is competitively priced.</li> <li>(3) Provide a preliminary draft Subcontracting Plan that defines scope of work anticipated to be self-performed and anticipated subcontracted work elements.</li> <li>(4) Define the Proposer's subcontractor procurement procedures and how they will provide best value for BPCA and provide a conceptual schedule for the subcontractor procurement.</li> </ol> <p><b>Phase 2 Work General Conditions Approach:</b></p> <ol style="list-style-type: none"> <li>(1) Provide the Proposer's approach to pricing Phase 2 Work General Conditions Costs as defined in Schedule B (Draft PDB Contract) through a transparent process.</li> <li>(2) Provide the Proposer's assumptions and variables that will be included in the Phase 2 Work General Conditions Costs and the methodology used to price them.</li> <li>(3) Provide the Proposer's approach to achieve efficiency in Phase 2 Work General Conditions Costs across all the Phase 2 Work Period.</li> </ol> <p>The entirety of this section, not including the example materials described in this section, is limited to 10 pages.</p>
2-5	Phase 1 Services Hours and Additional Tasks	<p>The Proposer shall provide a breakdown of each Phase 1 Services Task by the total expected hours to be spent by each individual/role, and all other assumptions for each task made to prepare the Phase 1 Services Fee breakdown estimate set forth in Proposal Form 8 (Phase 1 Not to Exceed Amount) so that BPCA may evaluate the anticipated level of effort for each task. However, no pricing information, including hourly rates and expected expenses, should be included in this section. Failure to exclude pricing information may result in disqualification of the Proposer.</p> <p>The Proposer should also include commentary and</p>



		assumptions (other than pricing information such as hourly rates and expenses) regarding any additional tasks the Proposer believes should be identified in Appendix 2 (Phase 1 Services) of the Draft PDB Contract. Such additional optional tasks or subtasks should reflect additional diligence during the Phase 1 Services Period that the Proposer believes will result in Phase 2 Work Costs savings.
2-6	MBE/WBE/SDVOB Participation Plans	Submit a preliminary MBE/WBE/SDVOB Participation Plan for Phase 1 Services and a separate preliminary MBE/WBE/SDVOB Participation Plan for the Phase 2 Work.
2-7	Minority And Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement	The Proposer shall submit a completed Proposal Form 4 (Minority And Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement)
2-8	Diversity Practices Questionnaire	The Proposer shall submit a completed Proposal Form 5 (Diversity Practices Questionnaire)

**VOLUME 3 – PRICE PROPOSAL**

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
3-1	Phase 2 Fixed Percentage Fee	The Proposer shall submit a completed Proposal Form 7 (Phase 2 Fixed Percentage Fee).
3-2	Phase 1 Not to Exceed Amount	The Proposer shall submit the Phase 1 Not to Exceed Amount, broken down per task, as required in Proposal Form 8 (Phase 1 Not to Exceed Amount).
3-3	ROM Cost Estimate	The Proposer shall submit a completed Proposal Form 9 (ROM Cost Estimate), based on the base Proposed Alignment submitted in Section 2-2 (Design Concepts) and the assumptions set forth in Proposal Form 9.

**SCHEDULE B**  
**DRAFT PDB CONTRACT**

To be provided separately on the Secure Website via Addendum.

**SCHEDULE C**

**PROJECT TECHNICAL CRITERIA**

Provided separately on the Secure Website with initial RFP issuance (135 pages total).

**SCHEDULE C-1****EXPLORATORY SITE ANALYSIS**

Provided separately on the Secure Website with initial RFP issuance as follows:

1. NWBPC Resiliency, Bathymetric and Land Surveys (Zip file includes 2 PDFs, 7 DWGs and 1 CTB file)\*
2. Structural Technical Memo – Core Drilling in Relieving Platform (7 pages)
3. Relieving Platform Reconstruction Studies (19 pages)
4. Spatial Studies (121 pages)
5. North BPC Resiliency Project Records
  - a. North BPC Resiliency - Agency and Stakeholder Meeting Minutes.pdf (87 pages)
  - b. North BPC Resiliency Design Report, March 2021.pdf (148 pages)
  - c. North BPC Resiliency Land Survey.zip (12 Files)\*
  - d. North BPC Resiliency, Agency Correspondence Docs, Feb 2021.pdf (181 pages)
  - e. North BPC Resiliency, Bathymetric Survey.zip (3 Files)\*

The 3D Base Model, Geotechnical Subsurface Investigation Report\* and Interior Drainage Modeling (Preliminary) are to be provided separately on the Secure Website via Addendum.

Please note the files marked with “\*” are the only documents that will be Reliance Documents in the PDB Contract.

**SCHEDULE C-2**  
**ENVIRONMENTAL**

To be provided separately on the Secure Website via Addendum.

**SCHEDULE C-3**

**STAKEHOLDER AND COMMUNITY ENGAGEMENT**

Provided separately on the Secure Website with initial RFP issuance as follows:

1. Agency Meeting Minutes (110 pages)
2. Community Engagement Documents (140 pages)

**SCHEDULE D****BACKGROUND DOCUMENTS**

Proposers will have access to the following documents on the Secure Website following execution of the Confidentiality and Non-Disclosure Agreement. All documents identified in this Schedule D are historical documents and shall be subject to the terms and conditions of the Confidentiality and Non-Disclosure Agreement.

**LIST OF DOCUMENTS – DISTRIBUTED WITH RFP**

<b>#</b>	<b><u>FILE NAME</u></b>	<b><u>NO. OF PAGES</u></b>
1	22 River Terrace, E-1 Site 19A Electrical Installations Site Plan, May 2000	1
2	Belvedere Land Surveys, Site 15 and Bosque Area, 10-10-1997	6
3	Belvedere North Cove Link, Aug 1993, Conformance Set	44
4	Belvedere Park Pavement Rehabilitation, 7-30-2004, IFC	14
5	Belvedere Phase I, 7-1-1998 Construction Docs A-00458	16
6	Belvedere Phase II, 11-13-1998	10
7	BMCC Architectural Drawings, North Buildings, 1973	8
8	BMCC Building Wall Work Details, 7-6-1999	1
9	BMCC Foundation Drawings, 1974-1975	9
10	BPC Esplanade Curtain Wall Repairs, May 31, 2018, IFC DWGs	8
11	BPC Load Limitations, 7-2-1981	3
12	BPC North Meadow Seawall Restoration, 1997	7
13	BPC North Platform & Seawall, 4-1-1988, As Built	11
14	BPC North Residential Area, Phase IV & V Infrastructure, Water Mains & Distribution, 1990-1991	5
15	BPC North Residential Neighborhood Sewer Upgrade, 1997 As Built	6
16	BPC Phase VI Pile Remediation, Esplanade Plaza, Rockefeller Park Esplanade, & N. Esplanade, 12-24-19 As Built	15
17	BPC Seawall and Block Wall Repairs, 12-16-1994	4
18	BPC South Residential Phase II Infrastructure, Utility & Related Support Systems, Albany St. to W Thames St., 1982-1983	42
19	BPC Streetscapes, River Terrace Crossing, 5-12-2004	3
20	Brookfield, 200 Vesey St., Building C & Wintergarden, Record Dwgs 10-9-1984	9
21	Brookfield, 225 Liberty St., Building B, 1983-1984, Preliminary	60
22	Brookfield, 225 Liberty St., Building B, Foundation Dwgs 12-1-1987	9
23	Brookfield, 250 Vesey St., Building D, Foundation Dwgs 1983-1984	7
24	Brookfield, 250 Vesey St., Building D, MEP Dwgs 1986-1989	22
25	Brookfield, BPC Civic Facilities, 1983-1989, As Built	19
26	Brookfield, North Cove Area, Sewer As Builts 1982-1986	10
27	Brookfield, North Cove Plaza, 1988	3
28	Brookfield, North Cove Yacht Harbor, 1988 Construction Set	47
29	Brookfield, Sewer & Water, 1985-1986	7
30	Brookfield, Structural, Earthwork, Street & Public Spaces, 1981	54
31	Brookfield, WTC River Water Intake Rerouting, 12-3-1984	3
32	Ferry Terminal Sea Wall, PANYNJ Contract F-614.009A, 7-10-2003	8
33	Ferry Terminal, Upland Utilities Improvements, Issued for Construction 6-11-2001	17

34	Gateway Plaza, Bldg Architectural Plans, 4-30-82	59
35	Harrison St. Reconstruction, NYCDDC HWMWTCA7A 12-28-2011 As-Built	37
36	Hudson Tower, 350 Albany St., July 1997, As-Built	27
37	Irish Hunger Memorial, As Built Plans, 2001	42
38	Irish Hunger Memorial, BPCA Streetscape, March 2004, Pricing Set	13
39	Kowski Plaza Vaults, 401 South End Ave., Construction Set, 2016	55
40	Liberty House, BPC Residential Development Phase II Parcel J, 1984-1985	99
41	North Cove Cellular Sheet Pile Encasement, 9-23-2016 Bid Set	7
42	North Esplanade Construction Documents, 11-30-1990	30
43	NYC Police Memorial, B-1 Boring Logs, 8-10-1992	1
44	NYMEX Bldg. Boundary Plan, 3-1-1995	1
45	NYMEX Foundation Plans, July 1995	9
46	NYMEX P-1 Ground Floor Plumbing Plan, 11-6-1995, GMP Issue	1
47	NYMEX_Site 15 Utility & Boundary Survey, 3-20-1995	1
48	NYMEX_Site 15 Utility Extensions, 9-1-1995 As Built	20
49	NYMEX Streetscape Improvements, 12-15-1997 As Built	12
50	NYMEX Temp. Plaza Improvements, 12-15-1997 As Built	5
51	NYMEX Visitor's Gallery, 11-8-1995	13
52	Port Authority, WTC Pump Station 1968-1969	21
53	Regatta, 21 South End Ave_BPCA Site 10, Arch Dwgs 1987-1988	35
54	Regatta, 21 South End Ave_BPCA Site 10, Boring Information, 10-16-1987 As Built	4
55	Regatta, 21 South End Ave, Dwg I-1 Courtyard and Sidewalk Plan 12-15-87 Not for Construction	1
56	Regatta, 21 South End Ave, ME & E Dwgs, 9-19-2003	7
57	Rockefeller Park & North Meadow Restoration, 1996 Issued for Bid	10
58	Rockefeller Park & North Meadow Restoration, 1998	5
59	Rockefeller Park Terrace Playground Reconstruction, July 2018 Bid Set	24
60	South Cove Jetty Deck Replacement and Bracing Repair, Contract 17-2464, June 2018 Bid Set	12
61	South Cove Plaza, 50 Battery Place - BPC Site 13, 1998-1999	80
62	Stuyvesant High School Drawings	175
63	Stuyvesant High School Pedestrian Bridge, 3-30-95 As Built	12
64	The Solaire, Site 81A, BPC 2001	29
65	Tribeca Pointe, Site 21-A , 12-19-96 Bid Set	60
66	Tribeca Pointe, Site 21-A, Esplanade Level, MEP, 1997-1998 As Built	9



**SCHEDULE E****FORM OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2022, by and between THE BATTERY PARK CITY AUTHORITY (d/b/a Hugh L. Carey Battery Park City Authority, "BPCA") and \_\_\_\_\_ (the "Proposer"), each a "Party" and together the "Parties."

WHEREAS, BPCA issued a Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project ("RFP") on January 27, 2022;

WHEREAS, the Proposer is interested in submitting a proposal responsive to the RFP (a "Proposal"); and

WHEREAS, in connection therewith BPCA is willing to disclose certain information to the Proposer, but only upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of and as a condition for furnishing the Confidential Information (as defined below), the Proposer and BPCA agree to the following, it being understood that they are also agreeing to direct their officers, employees, partners, representatives, advisors, subcontractors, vendors, agents, attorneys, and associates ("Representatives") to comply with the provisions hereof:

**1. Confidential Information.** For purposes of this Agreement, the term "Confidential Information" means any information that is made available to the Proposer by BPCA, or one of its Representatives, that is disclosed by BPCA pursuant to the RFP, on BPCA's secure data website, Procure or any other folder or material marked as "Confidential" or otherwise clearly marked as subject to this Agreement.

Notwithstanding anything in this Section 1 to the contrary, the term "Confidential Information" does not include any information that at the time of disclosure by BPCA, or any time thereafter (i) is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by the Proposer or its Representatives in violation of this Agreement), (ii) is available to the Proposer or its Representatives on a non-confidential basis from a source other than BPCA, or (iii) is already known to the Proposer or has been independently acquired or developed by the Proposer without violating any of the Proposer's obligations under Section 2 of this Agreement.

**2. Confidentiality; Disclosure.** The Confidential Information will be kept confidential by the Proposer, and the Proposer agrees to protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Proposer uses to protect its own confidential information of a like nature. The Proposer further acknowledges and agrees that certain Confidential Information (particularly as provided in Schedule D (Background Documents) of the RFP) contains security-sensitive information and shall be treated accordingly. Any analysis or work product that is based on the Confidential Information and developed by the Proposer is to be prepared for the exclusive use of BPCA, or any designee of BPCA. As a result, any such analysis or work product may not be reproduced or used by the Proposer or any Representative for any other purpose without the express written consent of BPCA.

The Proposer may disclose the Confidential Information or portions thereof to those of the Proposer's Representatives who need to know such information for the purpose of analysis or preparing a Proposal, so long as such Representative provides an executed Attachment A as set forth hereto to BPCA. The Proposer is not authorized to disclose Confidential Information to any Representative without (i) informing the Representative of the confidential nature of the Confidential

Information, and (ii) securing the agreement of the Representative to these confidentiality obligations, as set forth in Attachment A hereto.

If the Proposer or one of its Representatives becomes legally compelled (by law, rule, regulation, order, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Proposer must, where practical, provide BPCA with prompt prior written notice of the disclosure requirement so that BPCA may seek a protective order or other appropriate remedy or waive compliance with the terms of this Section 2. If a protective order or other remedy is not obtained, or BPCA waives compliance with the provisions of this Section 2, the Proposer, when compelled to disclose, must (i) furnish only that portion of the Confidential Information that, in accordance with the advice of its own legal counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

**3. Return.** Upon request from BPCA, the Proposer promptly will return or destroy (at the Proposer's option) all copies of the Confidential Information in the Proposer's possession in any form. The Proposer will keep confidential any Confidential Information contained in all copies of any analyses, compilations, studies or other documents prepared by or for the Proposer that contain or reflect any Confidential Information. If BPCA requests the return of its Confidential Information, then the Proposer must destroy all copies of its analyses, compilations, studies or other documents prepared by or for it that contain the Confidential Information in a manner that would allow its extraction or that would allow the identification of BPCA as the source of the Confidential Information or inputs to the analysis, etc. Upon notice that BPCA requests the return of its Confidential Information, the Proposer is not permitted to use it for any purpose.

Without limiting the generality of the foregoing, the Proposer agrees to erase, delete or destroy (in a manner satisfactory to BPCA in its sole discretion) any notes, documents, magnetic media and other computer storage, including but not limited to system backups, which contain any Confidential Information or information derived in whole or in part from any Confidential Information. The Proposer shall certify in writing such return or destruction, as the case may be, within fifteen days of BPCA's request.

The Proposer shall also ensure that all Representatives that receive Confidential Information in any form comply with the provisions of this Section 3.

**4. Intellectual Property Rights.** Nothing contained in this Agreement will be construed to grant or imply any right to the Proposer or any of its Representatives with respect to any intellectual property of BPCA (whether or not copyrighted or patented), including any uses related thereto, and all Confidential Information is the sole property of BPCA.

**5. Entire Agreement; Amendment; Waiver.** This Agreement constitutes the entire agreement of the Parties regarding access to and treatment of Confidential Information, and this Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the Agreement's subject matter. No provision in this Agreement may be waived or amended except by written consent of each Party. It is further understood and agreed that no failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

**6. Remedies.** If the Proposer commits a breach, or threatens to commit a breach of, of any material terms or conditions of this Agreement, BPCA will have the right to seek and obtain all judicial relief (including but not limited to specific monetary damages and interest, except that each Party waives any claim for consequential damages resulting from a breach of this Agreement) as may be ordered or awarded by a court of competent jurisdiction. The Proposer hereby acknowledges that legal remedies may be inadequate to fully compensate BPCA for a breach of this

Agreement.

**7. Beneficiary; Assignment; Governing Law.** This Agreement is for the benefit of each Party and will be governed by and construed in accordance with the laws of the State of New York. No Party may assign or otherwise transfer its rights or delegate its duties under this Agreement without the prior written consent of the other Parties, and any attempt to do so without consent is void.

**8. Term.** This Agreement and all obligations under this Agreement continue into perpetuity.

**9. No Warranty.** For any information, including but not limited to Confidential Information, that BPCA furnishes or otherwise discloses to the Proposer, it is understood and agreed that BPCA does not make any representations or warranties as to the information's accuracy, completeness, or fitness for a particular purpose.

**10. Authority.** The undersigned individuals executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of the Party on whose behalf they are executing this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement as of the date first written above.

**PROPOSER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BPCA:**

**BATTERY PARK CITY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACHMENT AREPRESENTATIVE'S ACKNOWLEDGEMENT OF THE CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN THE BATTERY PARK CITY AUTHORITY AND PROPOSER

This REPRESENTATIVE'S ACKNOWLEDGEMENT OF THE CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN THE BATTERY PARK CITY AUTHORITY AND PROPOSER (this "Representative's Acknowledgement") is executed as of \_\_\_\_\_, 2022, by \_\_\_\_\_ (the "Representative"), an individual person acting in his or her capacity as an officer, employee, partner, representative, advisor, subcontractor, vendor, agent, attorney, or associate to \_\_\_\_\_ (the "Proposer").

WHEREAS, BPCA issued a Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project ("RFP") on January 28, 2022;

WHEREAS, the Proposer is interested in submitting a proposal responsive to the RFP (a "Proposal");

WHEREAS, the Representative will be assisting the Proposer in preparing a Proposal;

WHEREAS, in connection therewith BPCA is willing to allow Proposer to disclose certain information to the Representative, but only upon the terms and conditions set forth herein;

NOW THEREFORE, in consideration of and as a condition for BPCA allowing Proposer to furnish the Confidential Information (as defined below) to the Representative, the Representative acknowledges the following:

1. **Confidential Information.** For purposes of this Agreement, the term "Confidential Information" means any information that constitutes Confidential Information pursuant to that certain Confidentiality and Non-Disclosure Agreement (the "Confidentiality and Non-Disclosure Agreement") entered into by the Proposer and BPCA as part of the RFP process.

2. **Confidentiality; Disclosure; Return and Intellectual Property Rights.** The Representative represents and warrants that he or she has read the entirety of the Confidentiality and Non-Disclosure Agreement and understands the obligations of all Representatives of the Proposer with respect to the handling and treatment of Confidential Information. The Representative covenants to comply, to the best of his or her abilities, with all requirements set forth in Sections 2, 3 and 4 of the Confidentiality and Non-Disclosure Agreement with respect to the handling and treatment of all Confidential Information.

IN WITNESS WHEREOF, the Representative understands and acknowledges the requirements set forth herein with respect to the handling and treatment of the Confidential Information.

**REPRESENTATIVE:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE F****FORM OF SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This SUBCONTRACTOR CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_, 2022, by and between THE BATTERY PARK CITY AUTHORITY (d/b/a Hugh L. Carey Battery Park City Authority, “BPCA”) and \_\_\_\_\_ (the “Subcontractor”), each a “Party” and together the “Parties.”

WHEREAS, BPCA issued a Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project (“RFP”) on January 28, 2022;

WHEREAS, the Subcontractor is a member of a proposer team (the “Proposer Team”) interested in submitting a proposal responsive to the RFP (a “Proposal”); and

WHEREAS, in connection therewith BPCA is willing to disclose certain information to the Subcontractor, but only upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of and as a condition for furnishing the Confidential Information (as defined below), the Subcontractor and BPCA agree to the following, it being understood that they are also agreeing to direct their officers, employees, partners, representatives, advisors, subcontractors, vendors, agents, attorneys, and associates (“Representatives”) to comply with the provisions hereof:

**1. Confidential Information.** For purposes of this Agreement, the term “Confidential Information” means any information that is made available to the Subcontractor by BPCA, or one of its Representatives, that is disclosed by BPCA pursuant to the RFP, on BPCA’s secure data website, Procore or any other folder or material marked as “Confidential” or otherwise clearly marked as subject to this Agreement.

Notwithstanding anything in this Section 1 to the contrary, the term “Confidential Information” does not include any information that at the time of disclosure by BPCA, or any time thereafter (i) is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by the Subcontractor or its Representatives in violation of this Agreement), (ii) is available to the Subcontractor or its Representatives on a non-confidential basis from a source other than BPCA or another member of the Proposer Team, or (iii) is already known to the Subcontractor or has been independently acquired or developed by the Subcontractor, from a source other than BPCA or another member of the Proposer Team, without violating any of the Subcontractor’s obligations under Section 2 of this Agreement.

**2. Confidentiality; Disclosure.** The Confidential Information will be kept confidential by the Subcontractor, and the Subcontractor agrees to protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Subcontractor uses to protect its own confidential information of a like nature. The Subcontractor further acknowledges and agrees that certain Confidential Information (particularly as provided in Schedule D (Background Documents) of the RFP) contains security-sensitive information and shall be treated accordingly. Any analysis or work product that is based on the Confidential Information and developed by the Subcontractor is to be prepared for the exclusive use of BPCA, or any designee of BPCA. As a result, any such analysis or work product may not be reproduced or used by the Subcontractor or any Representative for any other purpose without the express written consent of BPCA.

The Subcontractor may disclose the Confidential Information or portions thereof to those of the Subcontractor’s Representatives who need to know such information for the purpose of analysis or preparing a Proposal. The Subcontractor is not authorized to disclose Confidential Information

to any Representative without (i) informing the Representative of the confidential nature of the Confidential Information, and (ii) securing the agreement of the Representative to these confidentiality obligations.

If the Subcontractor or one of its Representatives becomes legally compelled (by law, rule, regulation, order, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Subcontractor must, where practical, provide BPCA with prompt prior written notice of the disclosure requirement so that BPCA may seek a protective order or other appropriate remedy or waive compliance with the terms of this Section 2. If a protective order or other remedy is not obtained, or BPCA waives compliance with the provisions of this Section 2, the Subcontractor, when compelled to disclose, must (i) furnish only that portion of the Confidential Information that, in accordance with the advice of its own legal counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

**3. Return.** Upon request from BPCA, the Subcontractor promptly will return or destroy (at the Subcontractor's option) all copies of the Confidential Information in the Subcontractor's possession in any form. The Subcontractor will keep confidential any Confidential Information contained in all copies of any analyses, compilations, studies or other documents prepared by or for the Subcontractor that contain or reflect any Confidential Information. If BPCA requests the return of its Confidential Information, then the Subcontractor must destroy all copies of its analyses, compilations, studies or other documents prepared by or for it that contain the Confidential Information in a manner that would allow its extraction or that would allow the identification of BPCA as the source of the Confidential Information or inputs to the analysis, etc. Upon notice that BPCA requests the return of its Confidential Information, the Subcontractor is not permitted to use it for any purpose.

Without limiting the generality of the foregoing, the Subcontractor agrees to erase, delete or destroy (in a manner satisfactory to BPCA in its sole discretion) any notes, documents, magnetic media and other computer storage, including but not limited to system backups, which contain any Confidential Information or information derived in whole or in part from any Confidential Information. The Subcontractor shall certify in writing such return or destruction, as the case may be, within fifteen days of BPCA's request.

The Subcontractor shall also ensure that all Representatives that receive Confidential Information in any form comply with the provisions of this Section 3.

**4. Intellectual Property Rights.** Nothing contained in this Agreement will be construed to grant or imply any right to the Subcontractor or any of its Representatives with respect to any intellectual property of BPCA (whether or not copyrighted or patented), including any uses related thereto, and all Confidential Information is the sole property of BPCA.

**5. Entire Agreement; Amendment; Waiver.** This Agreement constitutes the entire agreement of the Parties regarding access to and treatment of Confidential Information, and this Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the Agreement's subject matter. No provision in this Agreement may be waived or amended except by written consent of each Party. It is further understood and agreed that no failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

**6. Remedies.** If the Subcontractor commits a breach, or threatens to commit a breach of, of any material terms or conditions of this Agreement, BPCA will have the right to seek and obtain all judicial relief (including but not limited to specific monetary damages and interest, except

that each Party waives any claim for consequential damages resulting from a breach of this Agreement) as may be ordered or awarded by a court of competent jurisdiction. The Subcontractor hereby acknowledges that legal remedies may be inadequate to fully compensate BPCA for a breach of this Agreement.

**7. Beneficiary; Assignment; Governing Law.** This Agreement is for the benefit of each Party and will be governed by and construed in accordance with the laws of the State of New York. No Party may assign or otherwise transfer its rights or delegate its duties under this Agreement without the prior written consent of the other Parties, and any attempt to do so without consent is void.

**8. Term.** This Agreement and all obligations under this Agreement continue into perpetuity.

**9. No Warranty.** For any information, including but not limited to Confidential Information, that BPCA furnishes or otherwise discloses to the Subcontractor, it is understood and agreed that BPCA does not make any representations or warranties as to the information's accuracy, completeness, or fitness for a particular purpose.

**10. Authority.** The undersigned individuals executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of the Party on whose behalf they are executing this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement as of the date first written above.

**SUBCONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BPCA:**

**BATTERY PARK CITY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROPOSAL FORMS**

Proposal Form 1	Proposal Transmittal Letter
Proposal Form 2	Insurance Company Letter of Intent
Proposal Form 3	Surety Company Letter of Intent
Proposal Form 4	Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement
Proposal Form 5	Diversity Practices Questionnaire
Proposal Form 6	Proposal Work Product Agreement
Proposal Form 7	Phase 2 Fixed Percentage Fee
Proposal Form 8	Phase 1 Not to Exceed Amount
Proposal Form 9	ROM Cost Estimate



**PROPOSAL FORM 1: PROPOSAL TRANSMITTAL LETTER**  
**NORTH/WEST BATTERY PARK CITY RESILIENCY PROJECT**

**Proposal Transmittal Letter**

(To be typed on Proposer's Letterhead)

[Date]

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Michael LaMancusa, Assistant Contracting Officer

Re: Proposal to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project

\_\_\_\_\_ (the "Proposer") hereby submits its Proposal in response to the Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project ("RFP") issued by the Battery Park City Authority ("BPCA") on January 27, 2022, as amended.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer Team and not in my personal capacity, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following Addenda:

No.	Date
_____	_____
_____	_____
_____	_____

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer.
3. All firms currently included as part of the Proposer Team are identified in the Team Organization Narrative included in Part 2 of the Proposal.
4. All Key Personnel not listed in the Proposal but which are currently included as part of the Proposer Team are identified in the Key Personnel Narrative included in Part 2 of the Proposal.
5. The required insurance required by the PDB Contract will be provided or brokered by \_\_\_\_\_, as evidenced by the Insurance Company Letter of Intent submitted on Proposal Form 2.
6. All information and statements contained in the Proposal are current, correct, and complete, and are made with full knowledge that BPCA will rely on such information and statements in selecting a Proposer and executing the PDB Contract.

7. No member of the Proposer Team is currently suspended or debarred from doing business with any governmental entity.
8. The Proposer has reviewed all of the engagements and pending engagements of the Proposer Team members, and no potential exists for any conflict of interest or unfair advantage.
9. The Proposal has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFP. No attempt has been made or will be made by Proposer or any member of the Proposer Team to induce any other person, partnership, firm or corporation to alter or not submit a Proposal for the purpose of restricting competition.
10. Any ensuing PDB Contract has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the PDB Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.
11. Neither the Proposer nor or any of its members have communicated with another Proposer or members of another Proposer Team with regard to this procurement or the Project, except to the extent such communication has occurred with a subcontractor that is on both its team and another Proposer Team, such subcontractor is not a Key Entity or Key Personnel on the Proposer Team and all communications with such subcontractor have been pursuant to an established protocol to ensure that the subcontractor has not acted as a conduit of information between the Proposers.
12. The Proposal has not been and will not be solicited or secured directly or indirectly in a manner contrary to the laws of the State, said laws have not been violated and shall not be violated as they relate to this procurement or the PDB Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.
13. No Key Entity, is on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> (the “Prohibited Entities List”), and if selected as the Design-Builder, no Key Entity will utilize any subcontractor or sub-consultant that is identified on the Prohibited Entities List in connection with the PDB Contract.
14. No person or selling agency has been employed or retained to solicit the award of the PDB Contract under an arrangement for a commission, percentage, brokerage, or contingency fee or on any other success fee basis, except bona fide employees of the Proposer Team members.
15. Proposer Team members have not engaged in any practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration in connection with the submittal of this Proposal.
16. The Proposer, or applicable Proposer Team member, has all current and valid licenses, registrations and certificates required by applicable law to submit this Proposal and for provision of the services described in the RFP.

17. To keep this Proposal open for acceptance for 180 calendar days after the Proposal Due Date without any member or partner withdrawing or any other change being made in the Proposer's organization, unless BPCA has agreed in its sole discretion and in writing to such change or withdrawal.
18. If this Proposal is accepted, to provide the Security Bond as stipulated in the PDB Contract and the RFP.
19. The Proposer has carefully examined and is fully familiar with the RFP documents and is satisfied that such provisions provide sufficient detail regarding the Contract Services and the other obligations of the Design-Builder under the PDB Contract and do not contain internal inconsistencies; that it has carefully checked all the words, figures, and statements in its Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal, including a thorough review of all of the RFP documents; and that it has notified BPCA of any deficiencies in or omissions from any RFP documents or other documents provided by BPCA and of any unusual Site conditions observed prior to the date hereof.
20. The Proposer agrees that its SOQ, as modified by this Proposal, is incorporated into this Proposal as if fully set forth herein. Proposer certifies that each, every, and all of the representations made by Proposer in this Proposal are true and correct.
21. The Proposer understands that BPCA is not bound to accept the lowest priced Proposal or any Proposal.
22. The Proposer understands that all expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except to the extent that the Proposer receives a payment as provided for in Section 8 (Proposal Work Product Payments) of the RFP.
23. The Proposer agrees that BPCA will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.
24. The Proposer agrees that the Proposal shall be governed by and construed in all respects according to the laws of the State of New York.
25. New York State businesses [**WILL BE USED/WILL NOT BE USED**] [**PLEASE SELECT ONE**] in the performance of the PDB Contract.
26. The individual who will serve as the interface between BPCA and the Proposer for all further communications is:

NAME:

TITLE:

ADDRESS:

PHONE

FAX:

E-MAIL:

27. If selected, the Proposer agrees to negotiate in good faith to enter into a PDB Contract that reflects the substantive terms and conditions of the RFP and the Proposal.
28. The Proposer has submitted all Proposal Forms required to be submitted by the RFP, and such Proposal Forms are a part of this Proposal.
29. The Proposer has carefully examined all documents constituting the RFP and the Addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such Addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the Proposal Forms; provided, however, that the Proposer makes no such offer to complete the Project for the ROM Cost Estimate which is provided as a preliminary estimate only.

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Name of Proposer

---

Name of Designated Signatory

---

Signature

---

Title

**PROPOSAL FORM 2: INSURANCE COMPANY LETTER OF INTENT**

(To be typed on Insurance Company Letterhead)

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Michael LaMancusa, Assistant Contracting Officer

SUBJECT: Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project – Letter of Intent to Insure

Dear Mr. LaMancusa:

\_\_\_\_\_ (the “Proposer”) has submitted herewith a Proposal in response to the Request for Proposals, issued to short-listed Respondents, to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project (the “Project”) issued by the Battery Park City Authority (“BPCA”) on January 27, 2022, as amended (the “RFP”), pursuant to which it is seeking to be selected by BPCA to deliver the Project described in the RFP.

The Insurance Company has reviewed BPCA’s RFP and the Proposer's Proposal. The Insurance Company hereby certifies that it intends to provide all required insurance as described in BPCA’s Draft PDB Contract in the event the Proposer is selected for final negotiations and execution of the PDB Contract by BPCA.

\_\_\_\_\_  
Name of Insurance Company

\_\_\_\_\_  
Name of Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**PROPOSAL FORM 3: SURETY COMPANY LETTER OF INTENT**

(To be typed on Surety Company Letterhead)

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Michael LaMancusa, Assistant Contracting Officer

SUBJECT: Request for Proposals to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project – Letter of Intent to Issue Security

Dear Mr. LaMancusa:

\_\_\_\_\_ (the “Proposer”) has submitted herewith a Proposal in response to the Request for Proposals, issued to short-listed Respondents, to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project (the “Project”) issued by the Battery Park City Authority (“BPCA”) on January 27, 2022, as amended (the “RFP”), pursuant to which it is seeking to be selected by BPCA to deliver the Project described in the RFP. Capitalized terms used but not defined herein have the meanings provided in the Draft PDB Contract.

The surety has reviewed BPCA’s RFP and the Proposer's Proposal, which together will form the basis of the PDB Contract. The surety hereby certifies that, if the Proposer is selected as the Design-Builder, it intends to issue on behalf of the Proposer, as security for performance under the PDB Contract, (1) in connection with the execution of the PDB Contract, a Security Bond equal to \$5,000,000 for the benefit of BPCA and the purposes specified in the Draft PDB Contract; and (2) in connection with the execution of the GMP Amendment, a Performance Bond and Payment Bond equal to the Guaranteed Maximum Price for the benefit of BPCA and for the purposes specified in the Draft PDB Contract.

\_\_\_\_\_  
Name of surety

\_\_\_\_\_  
Name of Authorized Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**PROPOSAL FORM 4: MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT****CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MBEs/WBEs/SDVOBs AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN****NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations BPCA is required to promote opportunities for the maximum feasible participation of New York State-certified MBEs/WBEs (collectively, “MWBE(s)”) and the employment of minority group members and women in the performance of BPCA contracts. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, BPCA hereby establishes the following MWBE participation goals, based on the current availability of MWBEs:

**Overall goal for total MWBE participation: 30%**

**NYS-Certified Minority-Owned Business (“MBE”) Participation: 15%**

**NYS-Certified Women-Owned Business (“WBE”) Participation: 15%**

A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how BPCA will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and BPCA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a Proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Justin McLaughlin Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your

MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer's MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their Proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the selected Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Justin McLaughlin-Williams at BPCA, by email at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit an MWBE Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to BPCA, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Business Participation Opportunities for SDVOBs**

**For purposes of this solicitation, BPCA hereby establishes an overall goal of 6%** for SDVOB participation. A Proposer must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Proposer agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: [http://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).



In accordance with 9 NYCRR §252.2(s), the Proposer acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages as specified in the Contract.

Such damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals.

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the selected Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Justin McLaughlin-Williams at BPCA, by email at [justin.mclaughlin-williams@bpcanyc.gov](mailto:justin.mclaughlin-williams@bpcanyc.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit a Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer shall attempt to utilize, in good faith, any SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Contract award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer is required to submit a Contractor's SDVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a Proposal in response to this RFP, the Proposer agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other

forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with its Proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by BPCA on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**



## Your MBE/WBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MBE/WBE Program. It is also the platform New York State uses to monitor state contracts and MBE/WBE participation.

### GETTING STARTED

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337. For verification, in the email, include your business name and contact information.

### VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MBE/WBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MBE/WBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>).

For more information, contact Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337.

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

### EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

#### MBE/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_ (the "Contractor"), agree to adopt the following policies with respect to the project being developed at, or services rendered to, the Battery Park City Authority ("BPCA").

#### **MBE/WB**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.
- (4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.
- (5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.
- (6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

#### **EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2022

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Consultant's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

**MBE/WBE Contract Goals**

**30%** Minority and Women's Business Enterprise Participation

**15%** Minority Business Enterprise Participation

**15%** Women's Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROPOSAL FORM 5: DIVERSITY PRACTICE QUESTIONNAIRE**

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ company (the "Company"), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your Company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your Company's gross revenues (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as subcontractors, suppliers, joint-ventures, partners or other similar arrangement for the provision of goods or services to your Company's clients or customers?

3. What percentage of your Company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?<sup>1</sup>

4. Does your Company provide technical training<sup>2</sup> to MBEs/WBEs? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of MBEs/WBEs participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your Company participating in a government approved M/WBE mentor-protégé program?

If Yes, identify the governmental mentoring program in which your Company participates and provide evidence demonstrating the extent of your Company's commitment to the governmental mentoring program.

6. Does your Company include specific quantitative goals for the utilization of MBEs/WBEs in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your Company have a formal M/WBE supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your Company plan to enter into partnering or subcontracting agreements with New York State certified MBEs/WBEs if selected as the successful Proposer? Yes or No

If Yes, attach the complete Utilization Plan for the Phase 1 Services and Phase 2 Work.

<sup>1</sup> Do not include onsite project overhead.

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

All information provided in connection with the Diversity Practices Questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of  
Owner/Official  
Printed Name of  
Signatory  
Title

Name of Business

Address

City, State, Zip

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

**PROPOSAL FORM 6: PROPOSAL WORK PRODUCT AGREEMENT****PROPOSAL WORK PRODUCT AGREEMENT****NORTH/WEST BATTERY PARK CITY RESILIENCY PROJECT  
REQUEST FOR PROPOSALS FOR PROGRESSIVE DESIGN-BUILD SERVICES**

This PROPOSAL WORK PRODUCT AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2022, by and between the Battery Park City Authority (“**BPCA**”), and \_\_\_\_\_, a \_\_\_\_\_, (“**Proposer**”).

WHEREAS, the Proposer is one of the entities pre-qualified to submit Proposals for the North/West Battery Park City Resiliency Project (the “**Project**”), and wishes to submit a proposal (“**Proposal**”) in response to the Request for Proposal (“**RFP**”) for the Project issued by BPCA.

WHEREAS, the RFP requires each Proposer to include an executed Proposal Work Product Agreement in the Proposal, as a condition to BPCA’s obligation to make a payment to the Proposer pursuant to Section 8 (Proposal Work Product Payments) of the RFP.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.
2. **Services and Performance.** In recognition of the substantial effort required to submit a Responsive Proposal, BPCA hereby agrees to pay for the services associated with the Proposer’s preparation of a Responsive Proposal, subject to the terms and conditions of this Agreement and the RFP. A “**Responsive Proposal**” means a Proposal submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by BPCA, and is timely received by BPCA on or before the Proposal Due Date, as set forth in the RFP.
3. **Compensation and Payment**
  - a. The compensation payable to Proposer as consideration for the services described herein shall be in the amount of \$275,000, and shall be payable within 45 calendar days after execution of the PDB Contract or the decision not to award a PDB Contract to any Proposer pursuant to the RFP, as applicable.
  - b. Payment will be owing hereunder only upon (1) the receipt of a Responsive Proposal from the Proposer; (2) the execution of this Agreement; (3) the receipt of an invoice from the Proposer providing payment instructions, in the form set forth in Attachment A hereto; and (4) the execution of a PDB Contract by BPCA with an entity other than the Proposer or the decision by BPCA not to award the PDB Contract for any reason following the Proposal Due Date.
4. **Compliance with Laws**
  - a. Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to BPCA during this procurement process are, upon their receipt by BPCA, the property of BPCA and are subject to the Freedom of Information Law (FOIL).



- b. Proposer shall comply with all federal, State, and local laws, ordinances, rules, and regulations applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of Work under this Agreement.
- c. Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- d. The Proposer shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Proposer's activities in accordance with this Agreement, including by way of illustration, but not limitation, federal and state income tax, social security tax, unemployment insurance tax and any other taxes or business license fee as required by applicable law.

5. **Early Termination**

This Agreement may be terminated by BPCA in whole or in part at any time termination is in the interest of BPCA. No payment will be owing by BPCA in the event of any such termination, unless such termination occurs after the Proposal Due Date and BPCA determines the Proposer submitted a Responsive Proposal.

6. **Assignment**

Proposer shall not assign this Agreement without BPCA's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

7. **Waiver of Claims**

Without limiting any term or condition of the RFP, acceptance by the Proposer of payment from BPCA pursuant to this Agreement shall fully and forever constitute a waiver by the Proposer of any and all rights, equitable or otherwise, to bring any claim (including, without limitation, any protest of the Project procurement process, award or cancellation of the Project procurement) against BPCA or any of its officers, directors, agents, employees, representatives or advisors and their successors and assigns, in connection with the procurement of the Project.

8. **Destruction of Confidential Information**

Proposer agrees that, upon notification that the PDB Contract has been entered into with an entity other than the Proposer or the decision by BPCA not to award the PDB Contract for any reason following the Proposal Due Date, the Proposer shall immediately destroy all information in its possession that is subject to that certain Confidentiality and Non-Disclosure Agreement entered into by the Proposer and BPCA pursuant to the RFP.

9. **Miscellaneous**

- a. The Proposer and BPCA agree that the Proposer, its team members, and their respective employees are not agents of BPCA as a result of this Agreement. The Proposer is an independent contractor of BPCA. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Agreement or the performance thereof.
- b. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.

- c. This Agreement embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of New York, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- e. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.
- f. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue for any litigation relating to this Agreement is New York County, New York.

[Signature page immediately follows]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

**BATTERY PARK CITY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A**  
**PROPOSAL WORK PRODUCT AGREEMENT INVOICE**

**Company:** *Click or tap here to enter text.*

**Address:** *Click or tap here to enter text.*

**Phone:** *Click or tap here to enter text.*

**Contact:** *Click or tap here to enter text.*

**Email:** *Click or tap here to enter text.*

**Invoice Date:** \_\_\_\_\_, 2022

**Payment Terms:** Due within 45 Calendar Days after award of the PDB Contract or after the decision not to award the PDB Contract.

**Job Reference:** *North/West Battery Park City Resiliency Project Proposal Work Product Payment*

**Bill To:** Battery Park City Authority  
200 Liberty Street  
24th Floor  
New York, NY 10281  
Attention: Michael LaMancusa, Assistant Contracting Officer

<b>Description</b>	<b>Price</b>
Payment in accordance with the Proposal Work Product Agreement of the progressive design-build Proposal for the North/West Battery Park City Resiliency Project	\$275,000
<b>Total</b>	\$275,000

**Make all checks payable to:**

*Click or tap here to enter text.*

**PROPOSAL FORM 7: PRICE PROPOSAL – PHASE 2 FIXED PERCENTAGE FEE**

The Phase 2 Fixed Percentage Fee shall be a percentage applied to the Phase 2 Work Costs (other than the General Conditions Costs; the cost of the Performance Bond, Payment Bond and Warranty Bond; the costs of premiums and fees for Required Insurance during the Phase 2 Work Period; and any Phase 2 Work Costs incurred in performing corrective work pursuant to Section 6.18(F) (Notice of Uncovering Work), Section 6.19 (Correction of Work) or Section 7.3(B) (Corrective Action) of the Draft PDB Contract), as further described in Appendix 9 (Phase 2 Price) of the Draft PDB Contract.

The Phase 2 Fixed Percentage Fee shall be the same for all Phase 2 Work. The Phase 2 Fixed Percentage Fee is an amount attributable to profit and risk, and includes consideration for all costs that the Design-Builder may incur in connection with or related to the Phase 2 Work that are not specifically compensable under the PDB Contract as Phase 2 Work Costs or included under the General Conditions Fee. The Proposer acknowledges and agrees that full consideration for all Unallowable Costs has been taken account of, and priced into, the Phase 2 Fixed Percentage Fee.

The percentage amount proposed below shall be applied to the actual cost of the work, as incurred, not on estimates of project costs established prior to or on the GMP Amendment Date.

**Proposed Phase 2 Fixed Percentage Fee** \_\_\_\_\_ %

\_\_\_\_\_  
Name of Proposer

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**PROPOSAL FORM 8: PHASE 1 NOT TO EXCEED AMOUNT**

The not to exceed amount of the Phase 1 Services Fee, in US dollars, for the Phase 1 Services (identified in Appendix 2 (Phase 1 Services) of the Draft PDB Contract), is:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

The breakdown of the Phase 1 Services Fee by task is:

<u>Phase 1 Services Task</u>	<u>Not to Exceed Amount</u>
Task 1: Management Services	\$ _____
Task 2: Technical Services (Up to 60% Design)	\$ _____
Task 3: Environmental Assistance <sup>3</sup>	\$ _____
Task 4: Permitting Services <sup>4</sup>	\$ _____
Task 5: Stakeholder and Community Engagement	\$ _____
Task 6: FEMA Certification Requirements	\$ _____
Task 7: Technical Services (60% Design to 90% Design)	\$ _____
Task 8: GMP Proposal Development Services	\$ _____

Proposers may also provide additional optional tasks or subtasks to this Proposal Form. Such additional optional tasks or subtasks should reflect additional diligence during the Phase 1 Services Period that the Proposer believes will result in Phase 2 Work Costs savings and shall be detailed in Section 2-5 (Phase 1 Services Hours and Additional Tasks) of the Technical Proposal.

The Proposer shall attach a narrative that includes the job description, nature of the task, and the basis for the pricing of each task above, including expected hours, hourly rates, and all other assumptions for each task made to prepare the Phase 1 Services Fee. Such information, including in particular the hourly rates, will be subject to review and diligence by BPCA and shall be consistent with the information provided in Section 2-5 (Phase 1 Services Hours and Additional Tasks) of the Technical Proposal.

The hourly rates shall be all inclusive of all salary costs, fringe benefits, payroll taxes, general and administrative expenses (including insurance), profit and reimbursable expenses; provided, however the Proposer may identify certain categories of reimbursable expenses and fees for which the Proposer will expect payment separately from the hourly rates. Such categories shall be subject to the overall Phase 1 Not to Exceed Amount. Expense categories that are not identified will not be reimbursed separately and are assumed to be included in the hourly rates. Reimbursable expenses of the Design-Builder will be paid at cost and without markup. Proposers shall not be entitled to any additional mark-up, fee or multiplier being applied to the hourly rates provided with this Proposal Form.

<sup>3</sup> Task 3 shall include an allowance of \$100,000 for the development of a comprehensive Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP), as required by the NYC Office of Environmental Remediation or other Governmental Body.

<sup>4</sup> Task 4 shall include an allowance of \$60,000 for on-site mitigation design services (as described in Section 2.5.2(p)(iii) of Appendix 2 (Phase 1 Services)) up to 60% design and an additional \$30,000 allowance for such on-site mitigation design services from 60% to 90% design.

\_\_\_\_\_  
Name of Proposer

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**PROPOSAL FORM 9: ROM COST ESTIMATE**

The Proposer shall complete this Proposal Form based on the base Proposed Alignment submitted in Section 2-2 (Design Concepts) (excluding any secondary options or considerations the Proposer may wish to include in Section 2-2) and the milestone schedule proposed by the Proposer pursuant to Section 2-3 (Scheduling, Sequencing, and Phasing Approach).

Proposers may supplement this Proposal Form with cost estimates for any secondary options or considerations to the base Proposed Alignment described in Section 2-2 (Design Concepts). Such cost estimates shall (a) be in addition to completing this Proposal Form for the base Proposed Alignment, (b) be informational only to assist BPCA in its evaluations pursuant to Section 6.1 (General Evaluation Process), and (c) not be part of the ROM Cost Estimate evaluation described in Section 6.4 (Price Proposal Evaluation) of the RFP.

The ROM Cost Estimate shall be limited to an estimate of the actual costs (direct and indirect) of the Proposed Alignment (i.e., labor, materials, equipment and general conditions costs).

The ROM Cost Estimate shall not include the Proposer's Phase 2 Fixed Percentage Fee. Additionally, the ROM Cost Estimate shall assume the following:

- (1) Estimated costs are in today's dollars as of the Proposal Due Date, without overhead, profit, escalation or contingency for increases in the cost of labor, materials and equipment;
- (2) The GMP Amendment is executed at 60% design completion;
- (3) Proposers shall not include any cost for new interior drainage infrastructure; and
- (4) Only relieving platforms that must be replaced to support the base Proposed Alignment's flood resiliency or other necessary Project improvements are to be included (i.e. no replacements solely based on lifecycle maintenance concerns).

Proposers shall, in addition to completing this Proposal Form 9, attach additional spreadsheets (in excel and PDF format) that provide line item detail for each key component within each major category identified below for each Project Reach. Proposers shall determine the key components and additional detail to provide in these spreadsheets by utilizing the information generated in HCSS HeavyBid or similar estimating software. Such additional information will only be used by BPCA to verify the credibility of the ROM Cost Estimate set forth in this Proposal Form.

**Project Reach 1: Tribeca, Borough of Manhattan Community College, and Hudson River Park**

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 1 Total</b>	<b>\$</b>



Project Reach 2: North Battery Park City Esplanade

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 2 Total</b>	\$

Project Reach 3: Rockefeller Park

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 3 Total</b>	\$

Project Reach 4: Belvedere Plaza

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$

<b>Project Reach 4 Total</b>	\$
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Project Reach 5: North Cove

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 5 Total</b>	<b>\$</b>

Project Reach 6: South Esplanade

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$
Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 6 Total</b>	<b>\$</b>

Project Reach 7: South Cove

<b>Major Category</b>	<b>Cost</b>
Civil	\$
Structural	\$
Mechanical & Electrical	\$
Landscape & Finishes	\$
Traffic & Pedestrian Management	\$
Other Materials, Equipment and Labor	\$
Testing, Inspections and Survey Work	\$
Indirect Costs	\$
General Conditions Costs and General and Administrative Costs	\$

Balance of Design & Engineering Services (from 60% design through completion of construction)	\$
<b>Project Reach 7 Total</b>	\$

<b>Total ROM Cost Estimate (Project Reach 1 through 7 Totals)</b>	\$
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